ARIZONA CORPORATION COMMISSION
Powering Arizona's Future

ORIGINAL
Open Meeting Item

0000197189

Andy Tobin
Boyd Dunn
Sandra D. Kennedy
Justin Olson

DATE: APRIL 9, 2019

DOCKET NO.: E-01345A-18-0002

TO ALL PARTIES:

Enclosed please find the recommendation of Chief Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Opinion and Order on:

STACEY CHAMPION, ET AL. VS. ARIZONA PUBLIC SERVICE COMPANY
(FORMAL COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 19, 2019

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 23 AND 24, 2019

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
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EXECUTIVE DIRECTOR

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On this 9th day of April, 2019, the following document was filed with Docket Control as a Recommended Opinion and Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

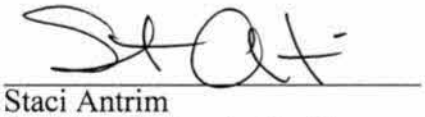
Adam L. Stafford, Esq.
207 N. Gilbert Road, Suite 001
Phoenix, AZ 85234
Attorney for Stacey Champion
astafford@wongandcarter.com
sc@champion-pr.com
KathyMooreRealtor@cox.net
joephxaz@hotmail.com
k.sturgis@cox.net
volcanic@cox.net
rppdiehl@gmail.com
joebrk@gmail.com
oakchart@cox.net
diakun_consulting@yahoo.com
hargis_m@hotmail.com
mlicosati@me.com
d.ziegler@hotmail.com
rllavallee@hotmail.com
16024325526@mymetropcs.com
laureyn0550@aol.com
jacobwozniak@yahoo.com
pkocanjer@yahoo.com
timsmith545@gmail.com
almamalexander@gmail.com
andreajhe@yahoo.com
waegener@cox.net
betsy120867@yahoo.com
tmespo0712@gmail.com
leannevc2000@yahoo.com
mikej.schneider85@gmail.com
sylviarainey@cox.net
markdcoco@hotmail.com
editornado@gmail.com
italianpunker@gmail.com
turvater@gmail.com
nats55@ymail.com
charmadillo@gmail.com
azhistoryman@yahoo.com
jpargas@PhoenixUnion.org
billboatman38@gmail.com
bookdfrag@gmail.com
hsdeogun@gmail.com
greenwold@q.com
yealife@gmail.com
james.hanson1@icloud.com
lil_kim_011@yahoo.com
farlie7706@aol.com
bjwazii@aol.com
rickschartman@yahoo.com
claudia.solano07@gmail.com
mandyhenning32@yahoo.com
heckmansheldon@gmail.com
sbrekke825@gmail.com
rtbellinger5@msn.com
devoung0415@gmail.com
Ismata89@gmail.com
MattyHui@hotmail.com
santhen@cox.net
bret.wall@gmail.com
pnrichards@cox.net
letshavefunshopping@live.com
bettiegibson@gmail.com
tonysteech@gmail.com
raquelebriggs@gmail.com
nassar4@msn.com
ewkitts@gmail.com
rebeccarobertsaz@gmail.com
bret.wall@gmail.com
cdsmith46@hotmail.com
didevlin13@gmail.com
neidich99@yahoo.com
dhartson2070@gmail.com
christin.m.schmitt@gmail.com
awagen@cox.net
mkhutchings9@gmail.com
jcpenney009@gmail.com
patbas7@aol.com
yvare@q.com
shelly.daniels@nielsen.com
dwjiles@real-time-consulting.com
akelley38@hotmail.com
tracy.1977@hotmail.com
32651.pl@gmail.com
RFKinaz@cox.net
cynthiabuser@cox.net
snirdror@yhaoo.com
Nstephenson@mbakeintl.com
briese@gmail.com
leroyandamy@hotmail.com
karina7c@gmail.com
jamesbldwn@yahoo.com
randi.wunch@gmail.com
**Consented to Service by Email**

Thomas Loquvam
PINNACLE WEST CAPITAL CORPORATION
400 North 5th Street, MS 8695
Phoenix, AZ 85004
Attorney for Arizona Public Service Company
Thomas.Loquvam@pinnaclewest.com
Melissa.Krueger@pinnaclewest.com
Debra.Orr@aps.com
Kerri.Carnes@aps.com
**Consented to Service by Email**

Richard Gayer
526 W. Wilshire Drive
Phoenix, AZ 85003
rgayer@cox.net
**Consented to Service by Email**

Warren Woodward
200 Sierra Road
Sedona, AZ 86336
w6345789@yahoo.com
**Consented to Service by Email**

Robin Mitchell, Interim Director
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007
LegalDiv@azcc.gov
utildivservicebyemail@azcc.gov
**Consented to Service by Email**

By: 

Staci Antrim
Assistant to Jane L. Rodda

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

ROBERT (BOB) BURNS, Chairman
ANDY TOBIN
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON

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| STACEY CHAMPION AND OTHER ARIZONA PUBLIC SERVICE CUSTOMERS,<br><br>Complainants,<br><br>vs.<br><br>ARIZONA PUBLIC SERVICE COMPANY,<br><br>Respondent. | DOCKET NO. E-01345A-18-0002<br><br>DECISION NO. _____<br><br>**OPINION AND ORDER** |

| | |
|---|---|
| DATES OF HEARING: | September 25, 26, 27, and 28, and October 1, 2018 |
| PLACE OF HEARING: | Phoenix, Arizona |
| ADMINISTRATIVE LAW JUDGE: | Jane L. Rodda |
| APPEARANCES: | Mr. Adam L. Stafford, for Complainant;<br><br>Mr. Warren Woodward, *pro se*, Intervenor;<br><br>Mr. Richard Gayer, *pro se*, Intervenor;<br><br>Ms. Melissa Krueger, Ms. Theresa Dwyer, and Mr. Thomas L. Mumaw, PINNACLE WEST CAPITAL CORPORATION, on behalf of Arizona Public Service Company; and<br><br>Ms. Maureen Scott, Deputy Chief Litigation and Appeals, Ms. Gina Huerta and Mr. Robert W. Geake, Staff Attorneys, Arizona Corporation Commission, Legal Division, for the Utilities Division. |

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**BY THE COMMISSION:**

## DISCUSSION

### I. Background

In Decision No. 76295 (August 18, 2017), the Arizona Corporation Commission ("Commission") approved a Settlement Agreement in Arizona Public Service Corporation's ("APS's") 2016 rate case (Docket No. E-01345A-16-0036 et al.) ("2016 Rate Case"). The Settlement Agreement, *inter alia*, approved a net base rate revenue increase of $94.624 million, exclusive of an adjustor transfer of $267.95 million.[1] Under the Settlement Agreement certain revenue requirements being collected through the Renewable Energy Adjustor Clause ("REAC"), Energy Efficiency Adjustor ("DSMAC"), Lost Fixed Cost Recovery ("LFCR") mechanism, Transmission Cost Adjustor ("TCA"), Environmental Impact Surcharge ("EIS"), Four Corners Rate Rider ("FCRR"), and the System Benefits Charge ("SBC") adjustment mechanism were transferred to base rates and those adjustor mechanisms' rates were "zeroed out" or reduced by amounts agreed to in the Settlement Agreement.[2] In other words, revenues formerly collected through adjustors were transferred or swept into base rates, and the adjustors' rates reduced commensurately.

The Settlement Agreement and Decision No. 76295 approved two sets of residential rates—Transition Rates and a new suite of residential rates ("New Rates"). The Transition Rates were the existing residential rates adjusted on a uniform basis to reflect the authorized revenue requirement and were utilized to provide a window of time for APS to inform customers about the newly approved rate plans prior to transitioning to the New Rates that began on February 2018.[3] The Settlement Agreement provided that all residential customers, except for grandfathered rooftop solar customers, would transition to APS's New Rates by May 1, 2018.

The New Rates included several new time-of-use ("TOU") and three-part demand rates for residential customers.[4] After May 1, 2018, new residential customers, were required to initially select

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[1] Decision No. 76295 at 21.
[2] Decision No. 76295 at Exhibit A (Settlement Agreement) at 11, Appendix D.
[3] Ex APS-4 Hobbick Dir at 4.
[4] Rate Plans available to residential customers under the New Rates included: R-XS ( a two-part rate design for non-distributed generation ("DG") customers using 600 kWh or less per month on average); R-Basic (a two-part rate design for non-DG customers using more than 600 kWh but less than 1,000 kWhs per month; R-Basic Large (a two-part rate available

a TOU or three-part rate plan unless the customer used less than 600 kWhs per month.[5] Customers who did not select a new rate plan by May 1, 2018, were put on the New Rate that was "most-like" their existing rate.

In addition, important to the current proceeding, both the Settlement Agreement and Decision No. 76295 referenced that under the terms of the Settlement Agreement and approved rates, the bill impact on the average residential customer would be 4.54 percent.[6] The 4.54 percent figure is the net impact of a 15.9 percent increase in base rates, less an 11.36 percent decrease in the affected adjustors' rates.[7]

On January 3, 2018, Stacey Champion ("Ms. Champion" or "Complainant Champion"), a residential customer of APS, filed a formal Complaint against APS in the form of a Change.org petition which included Ms. Champion's name, and the names of 425 other individuals characterized as customers of APS. The petition referenced A.R.S. § 40-246(A),[8] alleging that APS is in violation of Commission Order and demanding a "rate rehearing." The petition did not identify the Order in question or specify the alleged violations.

On January 31, 2018, APS filed a Motion for More Definite Statement or Alternatively Answer and Motion to Dismiss.

On February 13, 2018, Ms. Champion filed a Response to APS's Motion in which she elaborated on the basis of the Complaint. Without objection from APS, Ms. Champion's Response was

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to customers using more than 1,000 kWhs per month; TOU-E (two-part time of use rate available to all customers); R-2 (a three-part rate available to all customers); R-3 (a three-part rate available to all customers and default rate plan for customers on the Combined Advantage rate plan who did not voluntarily move to another rate for which they were eligible); and R-Tech (an optional pilot three-part rate program for customers with certain qualifying on-site technologies).

[5] Section XIX of the Settlement Agreement. After 90 days, new customers could opt-out and select R-Basic if they qualified, but then were required to stay on R-Basic for at least 12 months.

[6] Decision No. 76295 at 22 and 103.

[7] Decision No. 76295, Appendix L.

[8] A.R.S. 40-246(A), provides:

> Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or aimed to be in violation of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water or telephone corporation, unless it is signed by the mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service. (Emphasis added.)

deemed to be an amended complaint ("Champion Complaint").[9] The Champion Complaint notes that the Settlement Agreement and Decision No. 76295 claim that under the New Rates approved therein, residential customers will have on average a 4.54 percent bill impact, and that Decision No. 76295 cites an APS statement "that data shows that a significant majority of APS customers will save money on time- or demand-differentiated rates, with savings occurring even before customers modify their behavior and shift usage."[10] The Champion Complaint alleges that neither assertion--that the residential increase on average would be 4.54 percent or that many residential customers would save money--is accurate. Ms. Champion asserts that her bills for October 2017 through January 2018 indicated increases between 7.68 and 9.42 percent, and that many APS customers who signed the Change.org petition also report experiencing increases greater than 4.54 percent.[11] The Champion Complaint clarifies that Ms. Champion requests that the Commission hold a hearing to determine whether there is sufficient evidence to warrant a full-scale rate hearing. Specifically, the Champion Complaint states:

> If the bill impact assumption in the Settlement Agreement is wrong, and the actual average impact on residential customer's bills is higher, then what effect does this have on APS' revenues? If APS' new rates and charges result in a windfall for the utility at the ratepayers' expense, then those rates and charges cannot be said to be just and reasonable, and in the public interest. Instead, they are arbitrary, unjust, and unreasonable.
>
> Accordingly, Complainant clarifies her request for relief and asks that the Commission hold a hearing on her Complaint to determine if the real average bill impact on residential customers of the rates approved in Decision 76295 is greater than 4.54% and what effect this has on APS' revenue and the overall reasonableness and justness of APS' new rates and charges. [12]

On January 5, 2018, Mr. Richard Gayer, an APS residential customer and signatory on the Change.org petition, filed a Motion to Intervene in this matter, which request was granted on March 5, 2018.[13] On January 19, 2018, Mr. Gayer filed Complainant Gayer's First Amended Complaint ("Gayer Amended Complaint"). The Gayer Amended Complaint comprised four counts. Mr. Gayer

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[9] See Procedural Order dated March 5, 2018.
[10] Champion Complaint at 2 (*citing* Decision No. 76296 at 49).
[11] Champion Complaint at 3.
[12] Champion Complaint at 3-4.
[13] A Procedural Order dated February 2, 2018, stated that because Mr. Gayer signed the Change.org petition, he should be considered a party such that a request to intervene was not required. Subsequently, however, it was determined that those individuals who signed the Change.org petition in support of the Champion Complain were not parties, and that Mr. Gayer should be granted intervenor status, particularly since counsel for Ms. Champion stated he did not represent Mr. Gayer, and Mr. Gayer indicated that he desired to represent himself.

characterized Count One as a "slightly modified version" of the Champion Complaint.[14] Count Two alleged consumer fraud violations pursuant to A.R.S. § 44-1522. Count Three alleged discrimination against new customers arising from the mandatory TOU rates. Count Four alleged deprivation of due process arising from alleged bias. Subsequently, Mr. Gayer dropped Count Four, and agreed that his Counts Two and Three could be considered separately from the reasonableness of the rates that form the basis of the Champion Complaint.[15] Thus, it was determined that Counts Two and Three of the Gayer Amended Complaint would be held in abeyance pending the outcome of the Champion Complaint proceeding.[16] In this proceeding, Mr. Gayer argues that the rates approved in Decision No. 76295 are not just and reasonable because they are unfair to consumers, and there was not a true sweep of adjustor revenues and reset of the adjustor rates.

Mr. Warren Woodward, a customer of APS, filed a request to intervene on April 20, 2018. Mr. Woodward was granted intervention on April 27, 2018. In this proceeding, Mr. Woodward alleges that the rates approved in Decision No. 76295 are not just and reasonable because they are unfair to consumers.

Both Mr. Gayer and Mr. Woodward were parties to the 2016 Rate Case. Neither Mr. Gayer nor Mr. Woodward signed the Settlement Agreement.

On June 21, 2018, then-Chairman Forese requested that the Commission's Utilities Division ("Staff") participate in this matter.[17] Over the objection of Ms. Champion and the intervenors, Staff was granted leave to participate in the matter during a Procedural Conference held on July 25, 2018.[18] Staff reviewed the analyses performed by APS's and Ms. Champion's witnesses and ultimately concluded that APS had accurately implemented the approved rates and that the average bill impact was calculated correctly in the Settlement Agreement and Decision No. 76295.

The matter proceeded to hearing before a duly authorized Administrative Law Judge ("ALJ"), commencing on September 25, 2018, and concluding on October 1, 2018. Ms. Champion, represented by counsel, offered the testimony of Mr. Abhay Padgaonkar as an expert witness; Mr. Gayer and Mr.

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[14] Gayer Amended Complaint at 1.
[15] *See* Transcript of the February 15, 2018, Procedural Conference at 18-19.
[16] March 5, 2018, Procedural Order at 5.
[17] *See* Forese letter to the docket filed June 21, 2018.
[18] *See* August 10, 2018, Procedural Order.

Woodward appeared *pro se* and presented personal testimony; Staff, represented by counsel, presented the testimony of Yue Liu; and APS, represented by counsel, offered the testimony of Dr. Ahmad Faruqui, Mr. Leland Snook, Ms. Jessica Hobbick, and Mr. Charles Miessner. Following the presentation of testimony and exhibits, the matter was taken under advisement pending the filing of Closing Briefs and submission of a Recommended Opinion and Order.

The Commission received numerous written or telephonic Customer Comments in support of the Champion Complaint. In addition, during the hearing, 24 individuals appeared in person or telephonically to provide public comment. Most of the public providing comments expressed frustration, consternation, and fear because their electric bills had increased more than they expected or were simply too high following the 2016 Rate Case.

## II. Position of the Parties

### A. Ms. Champion

#### 1. Burden and Standard of Proof.

Ms. Champion recognizes that pursuant to A.A.C. R14-3-109(G), complainants have the burden of proof.[19] Ms. Champion asserts that the Commission has long held that the standard of proof for a complaint proceeding is a preponderance of the evidence, and that is the standard that should apply in this case.[20]

Ms. Champion asserts that the clear-and-convincing-evidence standard being advanced by APS in this case is used for judicial review of a Commission decision,[21] and there is no authority that such standard of proof applies to a complaint proceeding before the Commission.

#### 2. Are the rates approved in Decision No. 76295 just and reasonable?

Ms. Champion argues that the rates and charges approved by Decision No. 76295 are not just and reasonable because the actual average bill impact experienced by residential customers under the

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[19] Champion Opening Brief at 2.

[20] Champion Opening Brief at 2 (*citing* Decision No. 67112 at 3 (July 9, 2004); Decision No. 75042 at 12 (April 23, 2015); Decision No. 67581 at 8 (March 15, 2005); Decision No. 63914 at 3 (August 6, 2001); Decision No. 72594 at 46 (September 15, 2011); Decision No. 66949 at 54 (April 30, 2004)).

[21] *See* A.R.S. § 40-254; A.R.S. § 40-254.01; *Freeport Minerals Corp. v. Arizona Corp. Comm'n*, 244 Ariz. 409 (App. 2018); *Residential Util. Consumer Office v. Arizona Corp. Comm'n*, 199 Ariz. 588 (App. 2001); Champion Reply Brief at 4.

rates approved by Decision No. 76295 is significantly greater than the 4.54 percent projection that was the basis for the Commission's approval of the Settlement Agreement.[22] Ms. Champion states:

> When the Commission issued Decision 76295 (the "Decision"), approving the rates in the Settlement Agreement, the estimated bill impact on APS's residential customers was considered by the Commission in making its determination that those rates would be just and reasonable. According to the Settlement Agreement, under the new rates "[r]esidential customers will have on average a 4.54 percent bill impact." Meaning that the real-life bill impact of the new rates on actual residential customers was expected to at least RESEMBLE THE 4.54% estimated bill impact. However, the actual average bill impact experienced by Ms. Champion, and thousands of other APS customers, has been significantly greater than the projected 4.54%. The rate impact actually felt by residential customers as a result of the rate increase can only be described as rate shock.[23]

In addition, Complainant argues that the rates approved in Decision No. 76295 are not just and reasonable because they result in more revenue to APS than was anticipated and authorized.[24]

Ms. Champion's witness, Mr. Padgaonkar, used a statistically valid sample of APS residential bills to analyze the bill impact on residential customers under the Transition Rates and the New Rates. He concluded that under the Transition Rates, the average base rate increase was 15.68 percent, and that under the New Rates the average base rate increase was 17.89 percent.[25] Mr. Padgaonkar's results for the Transition Rates are close to those calculated by APS. However, Ms. Champion argues that the base rate increase under the Transition Rates is not relevant in determining the actual percentage increase because: (1) the Transition Rates are not permanent; (2) the Transition Rates do not reflect the new rate design; (3) the Transition Rates were frozen as of September 1, 2017; and (4) no customers should be on Transition Rates after May 1, 2018.[26] Ms. Champion states that any agreement between her and APS concerning the base rate increase ends with the Transition Rates.[27]

Mr. Padgaonkar performed two analyses of the bill impacts under the New Rates—one where all customers were on a new "most-like" rate and another based on the actual New Rates that customers were on as of May 1, 2018.[28] According to Ms. Champion, Mr. Padgaonkar's analyses indicated that

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[22] Champion Opening Brief at 1.
[23] Champion Reply Brief at 2 (emphasis in original; citations omitted). *See also* Champion Opening Brief at 6 (stating that the Commission relied on the 4.54 percent projected impact when approving the Settlement Agreement).
[24] Champion Opening Brief at 2.
[25] Champion Opening Brief at 7 (*citing* Ex C-1 Padgaonkar Dir at 19-20, 24).
[26] Champion Reply Brief at 5, fn 18 (*citing* Tr. at 922).
[27] Champion Reply Brief at 4. *See* APS Opening Brief at 12.
[28] Champion Opening Brief at 7.

residential customers who selected or were defaulted to a new "most-like" rate saw an average base rate increase of 19.14 percent, and that those customers who selected a New Rate that was "dissimilar" to their current rate saw an average base rate increase of 13.7 percent.[29] According to Mr. Padgaonkar's analyses, 22 percent of the residential customers in the sample were on dissimilar plans (*e.g.,* moved from no demand charge to a plan with demand charges), and 78 percent were on a similar plan (*i.e.*, stayed in a non-TOU, non-demand, or demand based plan), and taken together, the two groups had an average base rate increase of 17.89 percent based on the customers' 2015 usage under the rates they were actually being charged.[30] Ms. Champion contends that "[b]ecause the only difference between the [Transition Rates] and the [New Rates] is the rate design, the logical conclusion is that the higher average base rate increase under the [New Rates] is attributable to the change in rate design."[31] Thus, Ms. Champion argues, Mr. Padgaonkar's analyses refute APS's claim that the New Rates should produce the same overall revenue as the Transition Rates.

Under the Settlement Agreement, customers were to see a 15.9 percent base rate increase, but also an 11.36 percent reduction in adjustor rates. Ms. Champion argues that even if APS properly implemented the adjustor sweep, APS customers did not actually see the 11.36 percent reduction from the adjustor sweep on their bills due to "commingling, timing, and intervening events."[32] Ms. Champion states that because the Commission approved changes to the DSMAC and REAC adjustors in separate dockets at the same Open Meeting at which it approved the Settlement Agreement, ratepayers never saw the effect of the sweep of these adjustors on their bills.[33] Ms. Champion notes that APS contends that "because these concurrent adjustor changes did not stem from the Settlement in any way, it would have been inaccurate to include them in any representation of the Settlement Agreement or the Decision."[34] Ms. Champion responds:

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[29] Champion Opening Brief at 7 (*citing* Ex C-1 (Padgaonkar Dir) at 25). *See also* Champion Reply Brief at 5.
[30] Champion Reply Brief at 5; see Ex C-1 (Padgaonkar Dir) at 24.
[31] Champion Reply Brief at 5.
[32] Champion Reply Brief at 6-9. APS argues that Mr. Padgaonkar's analyses underestimate the bill impact of the adjustor transfer due to misunderstandings involving commingling, timing, and adjustor changes after the Test Year, but prior to the Decision. *See also* Champion Opening Brief at 10.
[33] *See* Decision No. 76312 (August 23, 2017) (approving APS's 2017 Renewable Energy Standard Implementation Plan, with a budget of $129.3 million, $110.9 million of which was to be collected in a 12-month period from the REAC adjustor rate); Decision No. 76313 (August 23, 2017 (approving APS's 2017 Demand-Side Management Implementation Plan with a budget of $66.6 million).
[34] Champion Reply Brief at 6 (*citing* APS Opening Brief at 23).

> In other words, APS properly swept the adjustors, but residential customers could not see it reflected in their bills because simultaneously, outside the rate case, there were changes to those adjustors that APS did not, and was not obligated to, inform its customers about. This could not have been what the Commission intended.[35]

In addition, Ms. Champion notes that while base rates increased by 2.09 percent as a result of sweeping the LFCR revenues, the LFCR adjustor did not immediately decline correspondingly because it reset at a later date. Ms. Champion asserts that APS did not explain to customers that the 4.54 percent average increase was actually a 6.63 percent[36] increase, and again, she claims, "[t]his could not have been what the Commission intended."[37]

Further, with respect to the TCA, Ms. Champion notes that although $90.6 million collected from residential customers in the Test Year was swept from the TCA to base rates, the TCA revenue requirement was increased due to Federal Energy Regulatory Commission ("FERC") reallocation of APS's transmission services to the residential class on June 1, 2017, with the effect that residential customers saw a 6.09 percent increase to the base rates as a result of the TCA sweep, but only a 5.2 percent reduction to the TCA, on their bills.[38]

Ms. Champion states that Mr. Padgaonkar's analyses, using the base and adjustor rates in effect on August 19, 2017, show that under the New Rates, residential customers experienced a bill increase of 12.56 percent.[39] Complainant states:

> APS and Staff both stated that Mr. Padgaonkar's analysis underestimates the bill impact of the adjustor transfer. This underestimation supposedly occurred because Mr. Padgaonkar's analysis relied "solely on price trends and observed rate schedules," which does not account for changes to the DSMAC and REAC adjustors outside the rate case; the LFCR adjustor transfer, which has yet to occur because the adjustor collects in arrears; and changes to the billing determinants and class allocators for the TCA adjustor. Staff and APS agree that a "backward" calculation is required to analyze the adjustor sweep. But this misses the point that residential customers did not see the 11.36% reduction to the adjustors on their bills. That is why Mr. Padgaonkar referred to the "backward" calculation as a "time warp." Despite announcements to its customers that the rate increase was effective on August 19, 2017, APS has failed to point to a specific month and year when

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[35] Champion Reply Brief at 6-7.
[36] 4.54 + 2.09.
[37] Champion Reply Brief at 7.
[38] Champion Rely Brief at 8.
[39] Champion Opening Brief at 10 (*citing* Ex. C-17; Ex. C-1 (Padgaonkar Dir) at 24). Complainant states that the average bill impact resulted from a 17.89 percent increase to base rates, a 4.84 percent reduction to the adjustors, and a 0.49 percent adjustor change credit.

> the customers should have or should expect to see the 4.54% average bill impact on their bills."[40] (citations omitted).

Ms. Champion alleges that none of the changes to the adjustors on August 19, 2017, (whether those changes occurred in the rate case or outside the rate case) were communicated to customers. She states:

> APS told its customers that the average base rate increase was 4.54%, which was supposed to be a 15.9% increase to base rates net of an 11.36% reduction to adjustor rates. But APS did not tell them about any adjustor rate increases and charges and misdirection that happened at exactly the same time.[41]

Ms. Champion contends that "[t]his kind of obfuscation and misdirection could not have been the intent of the Commission in approving the Settlement" and was "fundamentally unfair to ratepayers."[42]

Ms. Champion claims that even if she accepted (which she does not) Mr. Miessner's criticism of Mr. Padgaonkar's adjustor analyses, the "potential error" that APS identifies results in a 9.8 percent reduction in adjustors (not 11.36 percent as claimed by APS). Thus, Ms. Champion argues, if one accepts that the 11.36 percent adjustor sweep happened, the actual average residential bill impact would be 6.54 percent (roughly 2 percent higher than the estimated average impact communicated to ratepayers).

Ms. Champion points to the notice of the rate increase sent to residential customers, which provided:

> The bill impact for a residential customer using an average of 1,935 kWh per month is about a $6.16 per month increase, from $135.54 to $141.79, or 4.5 percent. The impact on your individual bill will depend on your actual energy consumption.[43]

Ms. Champion notes that the notice does not mention that winter rates will increase significantly more than summer rates or explain that the 4.54 percent average increase represents a range of bill impacts from a 95 percent increase to an 81-percent decrease, which she argues makes the average bill impact virtually meaningless.[44] Ms. Champion is skeptical of claims made by APS that customers are choosing to adjust their behavior and have reduced peak load in response to the New Rates, and she criticizes changes made to the residential rate design (i.e., increasing the Basic Service Charge and adopting on-

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[40] Champion Opening Brief at 10-11.
[41] Champion Reply Brief at 9.
[42] Champion Reply Brief at 9.
[43] Champion Reply Brief at 14 (*citing* Ex. C-4).
[44] Champion Reply Brief at 14.

peak hours that are too long), suggesting that if rate design recommendations made by the Southwest Energy Efficiency Project ("SWEEP") had been adopted in the 2016 Rate Case, the distribution of customers on the New Rates would more closely resemble the forecasted distribution.[45]

Ms. Champion states that in calculating the 15.9 percent base rate increase, APS overestimated the number of residential customers who would select a new rate plan that was "dissimilar" to their existing rate plan.[46] Specifically, according to Ms. Champion, APS assumed more customers would choose a new plan with a demand charge component than actually did. Furthermore, Ms. Champion claims, Mr. Padgaonkar's analyses showed that the "similar" or "most-like" New Rates are more expensive for customers than the "dissimilar" New Rates.[47] Thus, Ms. Champion argues, APS's inaccurate assumptions about the distribution of residential customers on the New Rates resulted in underestimating the average bill impact of the New Rates.[48]

Further, Ms. Champion identifies a tension between the new "most economical" rates and customers' ability to manage their bills. She used Mr. Woodward's experience as an example:

> This is true of Mr. Woodward, who is on the R-XS rate, a standard rate without a time of use or demand component. However, despite Mr. Woodward's almost 10% reduction in usage over an eleven-month period on the new rates, his efforts have yielded only a 0.71% reduction in his electricity costs. This indicates that the design of the [New Rates] created a predicament for Mr. Woodward (and potentially for the other approximately 254,000 residential customers on that rate plan as well) where even on his most economical rate, he cannot realistically mitigate the effect of the new rate increase by reducing or shifting his energy consumption. But because he is already on his most economical rate, switching to a new rate plan is not a solution for him, or other customers like him.[49]

During the evidentiary hearing, Commissioner Andy Tobin asked APS to perform an analysis of the residential bill impacts for the period May to November 2018.[50] APS filed its analysis on October 18, 2018. APS's analysis compared the base rate bills from 2015 with those from 2018 for 878,000

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[45] Champion Reply Brief at 16.
[46] Champion Opening Brief at 8; Champion Reply Brief at 9.
[47] Champion Opening Brief at 8. Champion states that as of May 1, 2018, APS's data indicates that 82.2 percent of APS's residential customers were on their "most-like" new rate.
[48] Champion Reply Brief at 10.
[49] Champion Opening Brief at 8 (citations omitted).
[50] Tr. at 682-687.

residential customer accounts. According to APS's analysis, the overall residential class-average bill impact for the four summer months in 2018 (May-August) was 0.3 percent.[51]

Ms. Champion argues that APS's bill impact for May through August 2018 is flawed because as even APS acknowledges, its analysis is not an appropriate comparison percent because it only covers four summer months instead of a full 12 months.[52] Mr. Padgaonkar also performed an analysis of the same period using APS's data files, and calculated a base rate increase of 17.9 percent (rather than 15.9 percent).[53] Ms. Champion argues that the APS analysis is incomplete, inaccurate, and misleading for the reasons that APS identified, but also because it used a completely different methodology for determining billing determinants than was used for the original analysis. Ms. Champion asserts

> APS "adjusted" the 2018 bills to "isolate the rate case impacts" in 2018 versus 2015. While these "adjustments" worked to create a valid comparison for standard plans, APS did not adjust the ratios of on-peak and off-peak kWh usage and also left the demand portion of the bill unchanged, which for the time-of-use and demand-based plans created "a hodgepodge of 2018 adjusted billing determinants that neither matched 2018 usage as it appeared on the actual bills nor the 2015 Test Year usage that the 4.54% bill impact was based on."[54]

Ms. Champion states that Mr. Padgaonkar's analysis used the same methodology and model that he used for the evidentiary hearing to analyze the base bill impact, and that his analysis found huge variations in the base bill increase between winter and summer months, ranging from a low of 10.8 percent for July to a high of 27.9 percent for December, and that the annual average base rate increase across all 878,103 customers was 17.9 percent, which is virtually identical to the annual average base rate increase of 17.89 percent that he had originally calculated.[55]

According to Ms. Champion, because the actual average base rate increase is 17.9 percent instead of 15.9 percent, APS is collecting more revenue from residential customers than approved and authorized by Decision No. 76295.[56] Ms. Champion notes that Staff's witness Mr. Liu acknowledged that customers' selection of New Rates would have an effect on APS's earnings--that if more customers were to choose their "best" rate, APS could under-earn, and if more customers than anticipated were

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[51] *See* APS Notice of Filing Residential Bill Impacts filed on October 26, 2018.
[52] *Id.* at 6.
[53] Complainant Stacey Champion's Notice of Filing Response to APS Residential Bill Impacts May-August 2018 at 27.
[54] Champion Reply Brief at 11-12.
[55] Champion Reply Brief at 12.
[56] Champion Reply Brief at 13.

to choose a rate that is not their "best" rate, APS could over-earn.[57] Ms. Champion believes that the public comments filed in this docket indicate a fear or distrust of demand charges, which may be motivating people to opt for a "most-like" rate rather than choosing their "best" rate, which in many cases would mean choosing a rate with a demand charge component. Ms. Champion asserts that because more residential customers remained on the "most-like" rate instead of moving to their "best" rate, APS is over-earning. Further, Ms. Champion asserts that APS witness Dr. Faruqui testified that it may take several years for customers to change to their best rate and argues that it is not fair, just, or reasonable to allow APS to over-earn while "rate optimization" occurs.[58]

Ms. Champion also cites to Securities and Exchange Commission ("SEC") filings by APS's parent company, Pinnacle West Capital Corporation ("Pinnacle West"), that reported $129 million in revenue attributable to the rate increase for the third quarter of 2017 through the second quarter of 2018.[59] Ms. Champion states, "While the rate increase has been touted in the press as bringing in an additional $95 million for APS, APS has made it clear that the additional revenue associated with the rate increase is really $148 million."[60] Mr. Padgaonkar estimates that APS will receive $157 million in additional revenue for a full year attributable to the rate increase.[61]

**3. Requested Relief.**

Ms. Champion asserts that A.R.S. § 40-246 provides a right to a hearing, and A.R.S. § 40-252 provides a remedy. She contends that A.R.S. § 40-246(A) contemplates two types of complaints--one alleging a violation of law or Commission decision or rule by a public service corporation, and the other challenging the reasonableness of rates and charges of a public service corporation--but does not identify a remedy for either type of complaint.[62]

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[57] Champion Opening Brief at 9; Champion Reply Brief at 19 (*citing* Tr. at 915-917).
[58] Champion Reply Brief at 14.
[59] Champion Opening Brief at 9, Ex C-3.
[60] Champion Opening Brief at 9 (*citing* Tr. at 15, 20, 23, 40, 41, 46).
[61] Champion Opening Brief at 9 (*citing* Ex C-3, Tr. at 147).
[62] Champion Opening Brief at 3. A.R.S. § 40-246(A) and (C) provide:

> A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation , or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation unless it is signed by the

APS claims that the Champion Complaint is an impermissible collateral attack on Decision No. 76295 pursuant to the last sentence of A.R.S. § 40-252, which provides: "In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."[63] Ms. Champion argues that APS has not offered a valid legal argument that the Commission is limited in its choice of remedies for a complaint brought pursuant to A.R.S. § 40-246(A). She cites the holding of the Arizona Supreme Court in *Davis v. Corporation Commission*[64] as controlling in this regard. *Davis* involved a case in which the Commission had granted a Certificate of Convenience and Necessity to a water company that included territory that had previously been certificated to Davis Water Company, and Davis Water Company appealed. The Arizona Supreme Court held:

> There is no merit in appellants' argument that this case involves a collateral attack on the prior order of the Commission, which is prohibited by the final sentence of A.R.S. § 40-252. This court has held that "collateral attack" as used in that section means an attack such as an application for injunctive relief against an order of the Commission. An application to the Commission to rescind, alter or amend an order, pursuant to A.R.S. § 40-252 does not constitute a collateral attack upon an order of the Commission.[65]

Ms. Champion asserts that for a complaint alleging a violation of law or a Commission decision or rule, the remedy of reparation for overcharges is provided by A.R.S. § 40-248.[66] Ms. Champion also asserts that Article 9, Chapter 2 of Title 40 of the Arizona Revised Statutes provides, among other

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> mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.
>
> C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall serve notice thereof, with a copy of the complaint, upon the party complained of not less than ten days before the time set for the hearing, unless the commission finds that public necessity requires that the hearing be held at an earlier date.

[63] Champion Reply Brief at 3 (*citing* APS Opening Brief at 7-8).
[64] 96 Ariz. 215 (1964).
[65] *Davis*, 96 Ariz. at 217-18.
[66] A.R.S. § 40-248 (A) provides:

> When complaint is made to the commission concerning any rate, fare, toll, rental or charge made by any public service corporation, and the commission finds, after investigation, that the corporation has made an excessive or discriminatory charge, the commission may order that the corporation make reparation to the complainant with interest at the legal rate from the date of collection, if no discrimination will result from such reparation. If the corporation does not comply with the order for payment or reparation within the time specified in the order, an action may be brought to recover the amount thereof.

things, for the imposition of monetary penalties against public service corporations for violations of the Arizona constitution, statutes, or orders or rules of the Commission.[67]

Ms. Champion argues that if the Commission were to determine that APS failed to comply with Decision No. 76295 by charging its customers more than the rates authorized in the Decision, then the Commission could order reparations to customers for the overcharge pursuant to A.R.S. § 40-248; and if the Commission were to find that APS failed to implement the rates as required by the Decision or that APS failed to comply with the customer outreach and education requirements of the Decision, then the Commission could impose fines in an amount no less than $100 or more than $5,000 for each violation of the Decision pursuant to A.R S. §§ 40-424 and 40-425, and Article XV, section 19 of the Arizona Constitution.[68]

Ms. Champion argues that the Arizona Constitution and statutes give the Commission broad authority to craft a remedy in this proceeding. Based on Attorney General Opinion No. 69-6, Ms. Champion argues that it would be illogical to conclude that the only remedy available for a complaint such as the one before us is to order the filing of a new rate case. Complainant asserts that the Attorney General found that "the hearing required by statute 'can only be directly related to the constitutional powers of the Corporation Commission pursuant to Article 15, Section 3' and concluded that '[the procedure set up by [A.R.S. § 40-246] is, we believe, an activator procedure designed to initiate an inquiry by the Corporation Commission who has the power over rates.'"[69]

Ms. Champion argues that while the Commission could order APS to file a new rate case, the Commission has the power to order other remedies such as altering or amending Decision No. 76295 pursuant to A.R.S. § 40-252, to resolve a complaint concerning the reasonableness of rates.[70] Complainant asserts:

> If the Commission determines that the rates and charges authorized by Decision No. 76295 are not just and reasonable because those rates resulted in a greater-than-intended bill impact on residential customers and/or greater-than-intended revenues for APS, then the Commission can rescind, alter, or amend Decision No. 76295. The Arizona Supreme Court has made it clear that "[a]n application to the Commission to rescind, alter or amend

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[67] Article 9, Chapter 2 of Title 40 encompasses A.R.S. §§ 40-421 through 40-433.
[68] Complainant's Opening Brief at 4.
[69] Complaint's Opening Brief at 4 (*citing* AG Op. No. 69-6 (1969)).
[70] Complainant's Opening Brief at 4-5.

> an order, pursuant to A.R.S. § 40-252 does not constitute a collateral attack upon an order of the Commission." *Davis v. Corp Comm'n*, 96 Ariz. 215, 219, 393 P.2d 909, 911-12 (1964). The court made it equally clear that a monopoly like APS, "is tolerated only because it is to be subject to vigilant and continuous regulation by the Corporation Commission, and is subject to rescission, alteration or amendment at any time upon proper notice when the public interest would be served by such action." *Id.* at 218, 911.[71]

Ms. Champion asserts further that if the Commission determines that Decision No. 76295 should be rescinded and that a full-scale rate hearing on APS's original rate application is the appropriate remedy, the case should be litigated and not settled in order to maximize transparency to the public.[72]

Ms. Champion states, "It could not have been the intent of the Commission to cause rate shock to residential customers by approving the Settlement Agreement."[73] She asserts that when it determined that the rates and charges in the Settlement Agreement were just and reasonable and approved the New Rates, the Commission considered the estimated bill impact, and expected that the bill impact on an average customer would resemble 4.54 percent. Complainant argues that because the actual result of the rate increase is not the intended result contemplated by the Settlement Agreement approved by the Commission, "the [n]ew rates cannot be said to be just and reasonable or in the public interest."[74] Therefore, Complainant requests that Decision No. 76295 be rescinded pursuant to A.R.S. § 40-252 and "a full-scale rate hearing be held on APS's original rate application."[75]

**4. Recommendations for Future Rate Cases.**

In response to a request for suggestions to improve future rate cases, Ms. Champion recommends the following:

- Utilities should be required to perform a rebilling analysis similar to that performed by Mr. Padgaonkar to evaluate the actual bill impact of new or revised rates.
- Utilities should be required to generate a table similar to Exhibit C-27 in this proceeding to evaluate and reconcile the forecasted as well as the actual rate impact on residential

[71] Complainant's Opening Brief at 5.
[72] Complainant's Opening Brief at 5. Complainant states that rescission is different than a rehearing pursuant to A.R.S. § 40-253 because the hearing in Docket No. E-01345A-16-0036 was on the Settlement Agreement, not the rate application filed by APS. *Id.* at fn 6.
[73] Complainant's Opening Brief at 11.
[74] Complainant's Opening Brief at 12; Complainant's Reply Brief at 2.
[75] Complainant's Opening Brief at 12.

customers and to clearly document all assumptions with respect to the customer transition to new rates and expected changes in customer behavior.[76]

- Utilities should fully disclose changes to the base rates and adjustors to customers, and there should not be simultaneous raising of adjustors outside the rate case while lowering adjustors inside the rate case, such that all changes to rates, whether they be base or adjustor, should be clearly delineated.
- When rate design changes are made, residential customers should be allowed to remain on transitional rates indefinitely, and the burden should always be on the utility to convince customers to switch to a newly created rate plan. Further, "[t]he utility should not force residential customers onto new rate plans, then spend $5 million in an attempt to educate them about the new plans" and large increases to fixed charges should be avoided.
- Residential customers should not be restricted from switching rate plans.
- The resolution of a rate case is a matter of public concern based on evidence and should not be subject to settlements.
- Utilities should be required to issue public service announcements on radio, television, print, and social media to inform and engage residential customers from the time of filing and throughout the process.

**B. Mr. Woodward**

Mr. Woodward argues that the evidence in this proceeding shows that the current residential rates approved in Decision No. 76295 are neither just nor reasonable.[77] Mr. Woodward notes that APS's witness, Ms. Hobbick, verified that Mr. Woodward was on the rate plan best suited to his usage, but that his bill declined only 0.7 percent, despite his having decreased his electric usage by 9.65 percent over an 11-month period. Mr. Woodward asserts, "Simple math shows at that rate Woodward would have to decrease his electricity consumption by 62.6 percent in order to offset the 'average 4.54

[76] Ex C-27 is a table that shows the distribution of bill impacts. Ms. Champion believes the table would be a useful tool to describe a rate increase to residential customers and that describing the impact on an average customer is not meaningful when the impact ranges from a 95 percent increase to an 81 percent decrease. Champion Opening Brief at 13.

[77] Woodward Opening Brief at 3.

percent bill impact' claimed in 76295."[78] Because there are slightly more than 254,000 customers on the same rate plan (R-XS), he notes, he is not alone in his predicament. He also asserts, that many of those customers on the R-XS rate probably live in smaller homes and apartments, many living on fixed incomes, and are likely unable to further reduce their energy consumptions. He argues that the resulting financial "punishment" of those who can least afford it is not just and reasonable.[79] Mr. Woodward contends that his experience (being on the best plan, decreasing usage by 9.65 percent, and decreasing his bill by only 0.7 percent) proves that rate choice is not the reason customers who reside in an apartment are not mitigating or offsetting the impacts of the rate increase.[80] Mr. Woodward asserts that APS's talk of "cost-causation principles" as support for the rate changes does not justify the lack of "ethical principles" inherent in "ripping off those who can least afford it."[81]

Mr. Woodward asserts that Staff had no answer for the dilemma of the R-XS customer, and Mr. Woodward expressed the belief that because Staff is a signatory to the rate case Settlement Agreement, Staff is bound to "support and defend the Agreement before the Commission" and is thereby biased.[82]

Mr. Woodward recommends that the Commission invoke A.R.S. § 40-252 to rescind the residential rates approved in Decision No. 76295. Mr. Woodward states that such action would "take APS and its residential customers immediately back to the rates in existence before 76295,...and would not require $5 million dollars to explain!"[83] Alternatively, Mr. Woodward suggests that if it is determined that APS was entitled to an increase, "then whatever percentage is agreed upon could be added as a separate line item to each residential customer's bill."[84] Under Mr. Woodward's recommendation, customers without a rate plan prior to Decision No. 76295 would be placed on the rate plan of their choice, and if no choice was made would be placed on their "most like" plan.[85]

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[78] Woodward Opening Brief at 3.
[79] Woodward Opening Brief at 3-4.
[80] Woodward Opening Brief at 4-5.
[81] Woodward Opening Brief at 5.
[82] Woodward Opening Brief at 5-6 (*citing* § 40.6 of the Settlement Agreement).
[83] Woodward Opening Brief at 6.
[84] Woodward Opening Brief at 6. Mr. Woodward provides the example that if APS was granted a three-percent increase and a customer's "cost of electricity used" was $100, then the rate increase reflected in a "new rate increase surcharge" line would be $3.
[85] Woodward Opening Brief at 7.

In addition, Mr. Woodward asserts that the Commission should find that customers are entitled to reparations under A.R.S. § 40-248(A) for overcharges related to the rates approved in Decision No. 76295.[86]

In response to the request to provide suggestions to improve the rate case process, Mr. Woodward first recommends that the settlement process be abandoned because it is unsuited for rate cases, which he believes should be conducted entirely in public.[87] Mr. Woodward asserts that the APS 2016 Rate Case settlement was a "backroom deal" with a flawed process that yielded a flawed result.[88]

Mr. Woodward also argues that Commission ALJs are not independent and should not preside over matters before the Commission.[89] Mr. Woodward contends that the Commission should use ALJs from the Arizona Office of Administrative Hearings where, he states, the ALJs have a code of ethics and the public has a formalized complaint procedure. Mr. Woodward asserts that if the Commission is serious about having truly impartial and objective judicial oversight, the Commission would pursue a change of law at the Arizona State Legislature. Further, he argues that funding of Commission candidates by companies that the Commission regulates must be eliminated.[90]

Additionally, Mr. Woodward argues that because Commission hearings are public hearings and affect the public's business, it is unethical and a "rip-off" that Commission transcripts are not available to the public without charge.[91] He also argues that data requests and responses that are not deemed confidential are pubic information that must be posted to the docket for all to see.[92] Finally, he argues that being required to file an original and 13 hard-copies is archaic, un-ecological, and unnecessarily costly.[93]

Mr. Woodward argues that both APS and Staff get the standard of review in this case wrong.[94] Mr. Woodward asserts that the standard under A.R.S. § 40-254.01 is one of a "clear and satisfactory

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[86] Woodward Opening Brief at 7.
[87] Woodward Opening Brief at 7.
[88] Woodward Opening Brief at 8.
[89] Woodward Opening Brief at 10.
[90] Woodward Opening Brief at 10
[91] Woodward Opening Brief at 11.
[92] Woodward Opening Brief at 11-12.
[93] Woodward Opening Brief at 12.
[94] Woodward Reply Brief at 3.

showing."[95] He asserts that Staff discusses A.R.S. § 40-254, with a clear-and-convincing-evidence standard, when the relevant statute is § 40-254.01, and the appropriate standard of review is a "clear and satisfactory showing" that the order is unlawful or unreasonable. Mr. Woodward argues that "showing" under A.R.S. 40-254.01 and "evidence" under A.R.S. § 40-254 mean different things – with "showing" meaning to point out or explain something that is in the record, while "evidence" means something factual, including expert witness testimony.

Mr. Woodward disputes APS's claim that the instant case is a prohibited collateral attack, and he argues that APS's reliance on *Miller v. Ariz. Corp. Comm'n*, 227 Ariz. 21 (App. 2010) is misplaced.[96] Mr. Woodward distinguishes the situation in *Miller* from the current situation because Miller began his challenge to the Commission Decision in Superior Court, while the instant proceeding is a new case under A.R.S. § 40-246, in a new docket, and separate from the rate case docket. Mr. Woodward also cites the holding in *Davis* as supporting the complainants' claims that the Champion Complaint is not barred as a collateral attack.[97]

Mr. Woodward also disputes APS's claim that because his arguments should have been raised as an intervenor in the underlying 2016 Rate Case, they are an impermissible collateral attack on the grounds that this is a new case, in a different docket, and asserts that if APS had believed that Mr. Woodward was launching a collateral attack, APS should have objected to his intervention. [98]

Mr. Woodward asserts that APS argued for a tortured reading of A.R.S. § 40-252 in an attempt to prevent that statute's application to this proceeding.[99] Mr. Woodward argues that the holding in *James P. Paul Water Co. v. Ariz. Corp. Comm'n,* 137 Ariz. 426 (1983), is not applicable to interpreting A.R.S. § 40-252 as APS has claimed. Mr. Woodward states that A.R.S. § 40-252 is clear and that APS appears to have overlooked the phrase "at any time" in that statute.[100] Thus, Mr. Woodward argues, the

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[95] A.R.S. § 40-254.01 is the statute addressing the standard for setting aside or modifying Commission orders through an action brought in the Arizona Court of Appeals.
[96] Woodward Reply Brief at 4-5.
[97] Woodward Reply Brief at 5.
[98] Woodward Reply Brief at 6.
[99] Woodward Reply at 6-7.
[100] Woodward Reply Brief at 8. A.R.S. § 40-252 provides:

> The commission may at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made by it. When the order making such recession, alteration or amendment is served upon the corporation

Commission may invoke A.R.S. § 40-252 whenever it wants "at any time."[101]

Mr. Woodward also disputes APS's claim in its Opening Brief that the complainants in this case are required to demonstrate harm. Mr. Woodward states that the instant action is brought as a complaint and that A.R.S. § 40-246(B) provides that "[t]he commission need not dismiss a complaint because of the absence of direct damage to the complainant."[102]

Mr. Woodward also objects to APS's characterizating his refutation of Dr. Faruqui's analyses as him making "personal attacks" on Dr. Faruqui.[103] Mr. Woodward claims that his sole reference to Dr. Faruqui's testimony was in his rebuttal testimony, which Mr. Woodward claims in no way personally attacks Dr. Faruqui and only refutes Dr. Faruqui's analyses.[104] Mr. Woodward asserts that APS has discredited itself with its "bad faith tactic".

Mr. Woodward also claims that in APS's Response to Commissioner Dunn's October 3, 2018, letter, APS misrepresents Mr. Woodward's position.[105] Mr. Woodward states that he did not merely opine that "customers do not require education" but made important points about APS's $5 million educational effort including:

1) Any rate that needs $5 million to educate customers is probably not a good rate;
2) No other utility services require $5 million to explain;
3) Suffering customers are being blamed for requiring a $5 million education effort;
4) Customers cannot conserve their way out of the APS rate increase;
5) Many customers cannot not afford the XS Rate plan;
6) Only a monopoly needs to educate customers, in a competitive environment, the business is educated by the customers; and

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affected, it is effective as an original order or decision. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

[101] Woodward Reply Brief at 8. Mr. Woodward notes that in its Opening Brief, APS argues about not receiving proper notice and a meaningful opportunity to be heard under 40-252. He argues that APS will get the "Proper Notice" required under the statute if and when the Commission invokes A.R.S. § 40-252.

[102] Woodward Reply Brief at 8-9.

[103] Woodward Reply Brief at 9 (*citing* APS Opening Brief at 13).

[104] Woodward Reply Brief at 9-10; (Ex. Woodward-3; Ex. Woodward-4).

[105] Woodward Reply Brief at 10. Commissioner Dunn's October 3, 2018, letter sought information about APS's customer education and outreach efforts, specifically asking APS to explain when and how customers were transitioned to new rate plans and how APS spent the $5 million budget, and directing APS to provide a detailed account of customer communications and education efforts regarding the new rate plans and TOU changes.

7) It is APS and the Commission that need educating.[106]

Mr. Woodward asserts that Staff also misrepresents his position when Staff states that Mr. Woodward is "dismissive of the impact to customers who will experience significant decreases" and fails to recognize that the 4.54 percent average bill impact is an average.[107] Mr. Woodward states that he was never dismissive of the impact on customers who received decreases and recognizes that the average bill impact "that is derived from billing extremes whereby some customers get enormous bill decreases and others get enormous bill increases is neither just nor reasonable."[108]

Mr. Woodward argues that Staff and APS should be "embarrassed" and "ashamed" to admit that it is acceptable for people to have massive bill increases as long as the overall average is a 4.54 percent impact.[109] Mr. Woodward states that "any reasonable person can ascertain the injustice inherent in APS's own numbers," in which 182,533 of its customers are receiving increases from 10 to over 100 percent.[110] He also states that "[a]ny reasonable person knows that rate increases should not be borne by those who can least afford it."[111]

Mr. Woodward argues that APS's list of "public benefits" from the rate case does not justify unjust and unreasonable rates.[112]

Mr. Woodward characterizes APS's and Staff's proposed remedies as "ridiculous," and asserts that it is a waste of time to spend more money on education and outreach when the rates are fatally flawed.[113] Mr. Woodward also is contemptuous of APS's "concession" to allow customers to change plans one additional time, because he notes that for people like him who are already on their best plan, there is no better plan.

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[106] Woodward Reply Brief at 11.
[107] Woodward Reply Brief at 12 (*citing* Staff Opening Brief at 19).
[108] Woodward Reply Brief at 12-13.
[109] Woodward Reply Brief at 13-14.
[110] Woodward Reply Brief at 14.
[111] Woodward Reply Brief at 14.
[112] Woodward Reply Brief at 14-15.
[113] Woodward Reply Brief at 15.

**C. Mr. Gayer.**

Mr. Gayer alleges that the residential rates established in Decision No. 76295 are unjust and unreasonable. He argues that the courts have found that just and reasonable rates are fair to both consumers and the public service corporation.[114]

Mr. Gayer states that he assumes that the rates from APS's 2012 rate case, set in Decision No. 73183 (May 24, 2012) "were just and reasonable and that the subsequent rates in [Decision No. 76295] and many dockets regarding Adjustors have made the present rates unjust and unreasonable."[115] Mr. Gayer argues that although many adjustors were added to base rates, none was really "swept" and that adjustors continued to be a significant part of customers' bills.[116]

Mr. Gayer argues that even if APS did not increase its rates in violation of Decision No. 76295, rates that "exploit APS customers still violate the Arizona Constitution Article 15, section 3 by failing to be both Just and Reasonable."[117] Mr. Gayer asserts that "customer exploitation" is illustrated in Exhibit Gayer 14,[118] which he states shows that approximately 120,000 APS customers suffered increases over 12 percent and that almost 900,000 APS residential customers suffered at least an 11 percent increase, with half of those hit with a 15 percent increase.[119] Mr. Gayer also points to APS's response to Gayer Data Request 4.3, in which APS stated that 32.1 percent of customers experienced an increase of approximately 8.3 percent or more, and about 11.3 percent of customers experienced an increase of 13.3 percent or more, as supporting his claim that the actual bill impacts are much more than the 4.54 percent.[120] Mr. Gayer contends that his and Mr. Woodward's personal experiences also show increases much greater than the 4.54 percent advertised by APS and beyond what may be viewed

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[114] Gayer Opening Brief at 1-3. (*citing Cogent Public Service, Inc. v. Arizona Corporation Commission*, 142 Ariz. 52, 56-57 (App. 1984)("It has long been the policy of our courts to recognize that the setting of utility rates must take into account the interests of utility consumers as well as utility shareholders."); *Phelps Dodge Corporation v. Arizona Electric Power Cooperative, Inc.*, 207 Ariz. 95 at ¶ 30 (App 2004)("The founders expected the Commission to provide both effective regulation of public service corporations and consumer protection against overreaching by those corporations.")).

[115] Gayer Opening Brief at 1; *see also* Gayer Reply Brief at 1.

[116] Gayer Reply Brief at 2.

[117] Gayer Opening Brief at 3.

[118] Ex Gayer 14 is a histogram graph that shows the distribution of the rate impacts. Mr. Gayer obtained the data for the graph from information provided by APS in response to a data request. See Ex Gayer-1 Gayer Dir at 8.

[119] Gayer Opening Brief at 3-4.

[120] Gayer Opening Brief at 4.

as just or reasonable.[121]

Mr. Gayer notes that to come up with the 4.54 percent increase, APS counts the sweep of adjustor revenues into base rates. Mr. Gayer argues that the "one-time mathematical addition had a very transient effect" on customer bills.[122] Mr. Gayer argues that there was not a true sweep of adjustor revenues because the adjustors did not remain at zero, and points to Exhibit Gayer-5, which shows the total charges on Mr. Gayer's bills for the period January 2017 through August 2018. Mr. Gayer contends that his table shows essentially constant charges for all of 2017, except for a decrease in September and October 2017, and a total increase of about 15.4 percent.[123]

Mr. Gayer asserts that the adjustor rates were manipulated outside the 2016 Rate Case in other proceedings, that he and other participants in the 2016 Rate Case were unaware of these proceedings; and that neither APS, Staff, nor anyone else did anything to alert Mr. Gayer.[124] Mr. Gayer notes that the adjustors existed prior to the Rate Case and continue to apply and adjust according to the terms of their plans of administration.

Mr. Gayer argues that APS does not understand the relevant statute upon which the Complaint is based, and thus is wrong when it suggests that only bill impacts caused by provisions of Decision No. 76295 may be addressed in this case. Mr. Gayer argues that A.R.S. § 40-246 "covers everything that may result in Unjust and Unreasonable rates, as well as violations of a statute or Commission Order. It is an attack on the existing rates, whatever their sources may be."[125] Mr. Gayer states that this case is not an appeal of Decision No. 76295 or a belated request for rehearing. He states that "[n]o customer has the ability to determine the sources of bill impacts but can see only the total result in his or her bill because APS provides only the bottom line."[126]

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[121] Gayer Opening Brief at 4 (*citing* Ex Gayer-3 (Declaration on Deception by APS), which he claims reveals increases of over 15 percent, and Mr. Woodward's February 12, 2018 Declaration in Support of Formal Complaint, which Mr. Gayer states shows a 16.8 percent increase).

[122] Gayer Opening Brief at 5.

[123] Gayer Opening Brief at 5.

[124] Gayer Opening Brief at 5-6.

[125] Gayer Reply Brief at 2, 4. Mr. Gayer distinguished the *Miller* case relied on by APS to support its claim that the instant proceeding is an improper collateral attack, on the grounds that the plaintiff in *Miller* did not participate in the relevant Commission case, but challenged the REST standards in the Superior Court, and not using A.R.S. § 40-246.

[126] Gayer Reply Brief at 3.

In response to APS's argument that complainants' analyses do not take into account changes to the REAC and DSMAC adjustors that occurred outside of the rate case, Mr. Gayer accuses APS of committing fraud.[127] In addition, Mr. Gayer asserts that the LFCR adjustor is being assessed on customer bills and that APS has failed to explain how the fact that it collects revenues in arrears and has a balancing account causes it to have no impact on customer bills.[128]

Mr. Gayer asserts that his analysis of the Transition Rates also shows an increase of well over 4.54 percent.[129] According to Mr. Gayer's analysis, his bills, on a per-kWh basis, increased from 8.2 percent to 15.1 percent.[130]

With respect to the relief sought in this proceeding, Mr. Gayer concurs with Mr. Woodward's recommendation to revert to the rates approved in the 2012 Rate Case.[131] Mr. Gayer also recommends that the Commission find that APS's application of the rate increase approved in Decision No. 76295 was far in excess of the promised 4.54 percent and violated parts of the Decision; that the rates approved in Decision No. 76295 are not just or reasonable; and that APS's continuous "manipulation" of the adjustors enabled APS to confuse the participants in the Rate Case into believing that the actual increase would be rather small. Mr. Gayer recommends that:

- The Commission rescind Decision No. 76295 pursuant to A.R.S. § 40-252, allowing APS a month to transition back to the old rates applied on July 1, 2012;
- APS be required to calculate the "Cost of electricity you used" by applying the old rates to the relevant usages;
- The Commission grant APS the 4.54 percent increase by adding a surcharge to all residential bills;
- APS calculate the surcharge by multiplying the "Cost of electricity you used" by 1.0454; and
- The Commission allow APS to apply for another rate case at any time. [132]

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[127] Gayer Reply Brief at 3.
[128] Gayer Reply Brief at 5.
[129] Gayer Opening Brief at 9 (referring to Ex Gayer-7 (Four-year summary of Mr. Gayer's bills)).
[130] Ex Gayer-7.
[131] Gayer Opening Brief at 9.
[132] Gayer Opening Brief at 10; Gayer Reply Brief at 10.

With respect to procedures for future rate cases, Mr. Gayer recommends that:

- No settlement agreements or confidential meetings be permitted because they defeat transparency and restrict customer education;
- All hearings and meetings be open to the press and public;
- Full participation in hearings be limited to intervenors, with others participating orally at meetings dedicated to public comments; and
- At least three Commissioners participate in all hearings, except when truly more important proceedings demand their active participation.[133]

Mr. Gayer argues that Staff offered no legal authority in its Opening Brief that would preclude the award of reparations to over-charged APS customers under A.R.S. § 40-248(a).[134] Mr. Gayer explains that the complainants are not trying to change any rate, but are merely seeking refunds of overcharges that violate the existing rates or of rates that violate the Arizona Constitution article 15, section 12 prohibition against unjust and unreasonable rates.[135]

Mr. Gayer calls Staff's criticisms of his position in this case "frivolous and without merit."[136] Mr. Gayer believes that, contrary to Staff's assertions, the process in the 2016 Rate Case was procedurally flawed, as only he and Mr. Woodward took strong positions supporting residential customers.[137] Mr. Gayer disputes Staff's claims that his position contradicts Mr. Padgaonkar's conclusions and that Mr. Gayer is claiming that there was no adjustor sweep.[138]

Mr. Gayer argues that APS's reliance on *Miller* to support the claim that this proceeding is a collateral attack on Decision No. 76295 is misplaced.[139] Mr. Gayer distinguishes *Miller* from the current circumstances on the grounds that Miller was not a participant in the underlying Commission case, but was challenging the REST standard in Superior Court and was not basing his challenge on A.R.S. § 40-246.

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[133] Gayer Opening Brief at 9.
[134] Gayer Reply Brief at 7.
[135] Gayer Reply Brief at 7-8.
[136] Gayer Reply Brief at 6-7.
[137] Gayer Reply Brief at 6. Mr. Gayer claims that the Residential Utility Consumer Office "turned its back on consumers" by signing the Settlement Agreement and that organizations like the AARP and Sun City Homeowners Association were "weak."
[138] Gayer Reply Brief at 6-7.
[139] Gayer Reply Brief at 4.

Mr. Gayer also disputes any APS suggestion that *Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 533-34 (App. 1978) makes a full rate case the only rate remedy available under A.R.S. § 40-246.[140] Mr. Gayer argues that the holding in *Scates* is not relevant to any issue in this case.

Mr. Gayer argues that APS's reliance on *James P. Paul* to support why A.R.S. § 40-252 does not offer a remedy in this case is misplaced because APS confuses the impact of a utility's loss of its Certificate of Convenience and Necessity with the minimal impact of rescinding an unnecessary rate increase.[141]

Finally, Mr. Gayer addresses APS's October 26, 2018, filing relating to actual 2018 rate impacts Mr. Gayer argues that APS's analysis unnecessarily relies on adjustments of Billed Days, the Basic Service Charge, Billed kWh, Base kWh Charges (non-TOU Rates) and kWh Charges (TOU Rates).[142] Further, Mr. Gayer states:

> Assuming that APS's side-by-side data are correct, the data in the right-hand "updated" columns demonstrate that at least 37,100 APS customers are being hit harder by the New rates than was projected. Although they comprise "only" 4.2% of APS's customers, the impact on them exceeds 30%. Shocking is the "fact" that 2,183 of those customers are hit with charges that exceed 100%, more than double their burden under the old 2012 rates. But the fact remains that 182,533 APS customers are suffering under rate increases that exceed 10%, which are clearly unjust and unreasonable.[143]

## D. APS

### 1. Burden and Standard of Proof

APS notes that the parties agree that, as the complainant, Ms. Champion bears the burden of proof. APS argues that in this case, Ms. Champion should be required to prove her claims by "clear and convincing" evidence.[144] APS asserts that the clear-and-convincing-evidence standard is appropriate because her complaint is a "collateral attack on a final Commission ratemaking decision," on which Arizona law imposes a stringent standard for review.[145] APS asserts that the fact that the clear-

[140] Gayer Reply Brief at 4.
[141] Gayer Reply Brief at 8.
[142] Gayer Reply Brief at 9.
[143] Gayer Reply Brief at 9.
[144] APS Opening Brief at 7.
[145] APS Opening Brief at 7.

and-convincing-evidence standard applies to appeals from Commission decisions does not preclude its application in this case.[146]

APS maintains that any change to Decision No. 76295 sought by Ms. Champion is barred as a collateral attack. Moreover, according to APS, the Decision is presumed lawful and should be upheld, absent a showing that the Decision is arbitrary, an abuse of discretion, or unsupported by "substantial evidence."[147] APS argues that this standard is the equivalent of the "clear and convincing evidence" standard under Arizona law. APS asserts that "[i]t would contort due process if a party to a rate case was held to a clear and convincing standard in an appeal of that case, but a non-party could maintain a successful collateral challenge to that same rate-case decision by meeting a lesser standard after the fact."[148] APS states further that even an intervenor in a rate case has to meet the clear-and-convincing-evidence standard to successfully challenge the prudency of utility investments.

APS states that in resolving complaint cases under A.R.S. § 40-246, the Commission typically does not identify the standard of proof, and that those complaint cases where the Commission applied a preponderance-of-the-evidence standard of proof are wholly distinguishable from the case at hand because they were consumer complaints that did not challenge the reasonableness of rates established in a Commission Decision, "much less ask the Commission to overturn a prior rate case decision as Ms. Champion does here."[149] APS argues, "The service quality complaints or disputes over the termination of a customer's individual service for nonpayment substantively and legally differ from the reversal of a constitutionally-based determination by the Commission of just and reasonable rates."[150] Furthermore, APS asserts, unraveling a settlement and rate case decision should not be lightly undertaken, and the complainants must be held to a clear and convincing evidentiary standard.

APS suggests that applying the preponderance-of-the-evidence standard in a case like this would render A.R.S. § 40-254.01 meaningless, as potential complainants could wait until after the time for appeal has run and challenge the established rates to obtain reversal under a more lenient standard.

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[146] APS Reply Brief at 7.
[147] APS Opening Brief at 8 (*citing Residential Util. Consumer Office v. Ariz. Corp. Comm'n*, 240 Ariz. 108, at 111 (2016); *Freeport Minerals Corp. v Ariz. Corp. Comm'n*, 244 Ariz. 409 (App 2018)).
[148] APS Opening Brief at 8.
[149] APS Opening Brief at 8-9.
[150] APS Opening Brief at 9.

APS argues further that the Commission must interpret related statutes, specifically A.R.S. § 40-254.01 and § 40-246, consistently with each other, giving effect to both. APS asserts that imposing a clear-and-convincing-evidence standard harmonizes the statutes and avoids the application of conflicting legal standards to challenges of existing rates.[151] APS argues that the lower standard advocated by the complainants would create a structure that would allow all rate cases to be litigated twice.[152]

According to APS, because the Champion Complaint is not a typical complaint brought under A.R.S. § 40-246, or a civil lawsuit in superior court, but is rather a challenge to the reasonableness of rates as being in violation of the Arizona Constitution, Ms. Champion is making a collateral attack on Decision No. 76295. APS believes that the clear-and-convincing-evidence standard applies for the following reasons:[153]

- In seeking rescission of Decision No. 76295, Ms. Champion asks for extraordinary relief from a Commission ratemaking decision in which the Commission exercised its plenary constitutional authority;
- Ms. Champion attacked existing approved rates as violating the Arizona Constitution;
- Under Arizona law, the Decision is presumed to be valid and supported by substantial evidence;[154]
- To successfully challenge a Commission ratemaking decision a party must demonstrate that the decision is unlawful or unreasonable by clear and convincing evidence;[155]
- This case concerns issues of public importance to consumers and utilities alike;[156]

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[151] APS Opening Brief at 9-10. *See also* APS Reply Brief at 10 (stating that the lower standard advocated by Champion would create a structure that allows all rate cases to be litigated twice).
[152] APS Reply Brief at 10.
[153] APS Reply Brief at 8-9.
[154] *Residential Util. Consumer Office v. Ariz. Corp. Comm'n*, 244 Ariz. 409, 411 (App. 2018); *see also* A.R.S. § 40-254.01 (A), (E).
[155] *Litchfield Park Serv. Co. v. Ariz. Corp. Comm'n*, 178 Ariz. 431, 434 (App. 1994); *Consol. Water Utils. Ltd. v. Ariz. Corp. Comm'n*, 178 Ariz. 478, 481 (App. 1993); A.R.S. § 40-254.01(E).
[156] APS states that by definition, utility rate determinations involve important public issues (*citing City of Tucson v. Citizens Utils. Water Co.*, 17 Ariz. App. 477, 480 (1972); *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 155 (1956)). *Cf Stop Exploiting Taxpayers v. Jones*, 211 Ariz. 576, 578 (App. 2005).

- Ms. Champion's allegations effectively attack the manner and method mandated by Arizona law for utility rate cases;[157]
- Decision No. 76295 is consistent with recent Commission decisions, representing the Commission's policy determinations to achieve cost-based rates, promote energy efficiency, and reduce interclass subsidization; and
- The integrity and finality of the Decision must be considered, particularly when the Complaint has failed to present evidence of changed circumstances or conditions not present at the time the Decision was rendered.[158]

**2. Did APS correctly implement Decision No. 76295?**

APS asserts that it followed Commission precedent and industry-wide practices in designing the residential rates that were attached to and approved by Decision No. 76295. APS points to the testimony of Mr. Snook, who explained the process for designing rates based on the revenue requirement using a historic 2015 Test Year and 2015 billing determinants. APS states that the rates were widely distributed to all interested persons for review, were available as a matter of public record, and were attached to the Settlement Agreement and the Decision. APS states that it also submitted the rates, including updated schedules for the adjustor mechanisms, as a compliance filing for Staff's review and validation. APS notes that Mr. Snook testified that APS made efforts to ensure that the approved rates were in fact the rates charged to APS customers by having an independent audit by Deloitte, as well as an internal review of randomly selected bills.[159] APS also points to the testimony of Dr. Faruqui, whom APS states confirmed that APS's practices in designing rates to meet Decision No. 76295's specified revenue requirements were consistent with industry norms and would collect the revenue assigned to each class of APS customers.[160]

Moreover, APS argues that the 4.54 percent referenced in the Settlement Agreement accurately represents the average annual increase for residential rates, taking into account the transfer of Test Year revenue requirements from certain adjustor mechanisms. APS notes that in general, there is agreement

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[157] Tr. at 81, 85-86, 250-52, 931, 934-35.
[158] *James P. Paul Water Co. v Ariz. Corp. Comm'n*, 137 Ariz. 426, 429 (1983).
[159] APS Opening Brief at 11.
[160] APS Opening Brief at 11.

that the increase in residential rates was 15.9 percent before the effects of the adjustor transfer.[161] APS asserts that Dr. Faruqui used Ms. Champion's own analysis of her bills to illustrate the effect of the rate increase, and that after making five adjustments to the Champion analysis and accounting for differences between Ms. Champion and the composite average residential customer and bill changes unrelated to the Decision, Dr. Faruqui reconciled Ms. Champion's bills with the 4.54 percent average annual increase.[162] APS states that none of the parties have refuted Dr. Faruqui's analysis.

In addition, APS points to the testimony of Ms. Hobbick, who presented a "bottoms up" analysis of Test Year billing results by recalculating billings for all 951,043 customers for which APS had a full Test Year of interval billing data, with the outcome indicating an average annual residential increase of 4.1 percent.[163] Ms. Hobbick testified that the New Rates were designed to produce the same overall revenue as the Transition Rates. The analysis performed by Ms. Hobbick produced an annual average rate increase of 4.1 percent, but with a greater diversity of results.[164] APS claims that the fact that the New Rates could produce a more disparate result for individual residential customers was fully contemplated from the beginning by the parties to the Settlement Agreement.[165] APS states that "[w]hether these results actually occur will depend on post-Decision events (e.g., customer rate selection, customer usage, etc.), showing that customer choice could not be assumed away as in prior rate cases."[166] APS states that its goal in the rate-design portion of the last rate case was to modernize its rate design and "significantly reduce the subsidies within the residential class that had accumulated over more than three decades of essentially across the board rate adjustments."[167] APS states that during the hearing on the Settlement Agreement, APS introduced two exhibits showing that a wide range of potential results could occur as a result of the rate designs being proposed in the Settlement Agreement.[168] In addition, APS states that the New Rates involved "an important element of customer

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[161] APS Opening Brief at 12. Mr. Padgaonkar calculated the increase as 15.68 percent, using a smaller sample of customers.
[162] APS Opening Brief at 12-13; Ex APS-1 at attachment AJF-2DR at 14.
[163] APS Opening Brief at 14; Ex APS-4 at 4 and attachment JEH-1DR.
[164] Ex APS-4 at 5.
[165] APS Opening Brief at 14.
[166] APS Opening Brief at 14.
[167] APS Opening Brief at 14-15.
[168] APS Opening Brief at 15. The same exhibits were introduced in this proceeding as Ex APS -17 and APS-18.

choice,"[169] which played a significant role during the implementation of the Transition Rates.[170] APS states that generally, customer choice is not considered in designing rates, on the assumption that existing customers will remain on the rate they had during the Test Year, and new customers will select rate options that are similar to those of existing customers. In this case, with the newly proposed rate designs, APS made projections about customers' rate selection, "while noting that customer rate optimization was an ongoing process."[171] Further, APS notes, Dr. Faruqui stated that rate optimization may take several years.[172]

In addition, APS notes the testimony of Mr. Miessner, who also performed a "top down" analysis, which validated the base rate increase of 15.9 percent.[173] Given the general agreement that base rates increased 15.9 percent, APS characterizes the remaining dispute as involving the magnitude and timing of the adjustor revenue transfer.[174] APS summarizes Mr. Meissner's testimony as follows:

> Mr. Meissner examined the adjustor transfer in two different ways. First, he looked at the transfer in the aggregate. That involved comparing the total adjustor revenues to be transferred from the seven adjustors referenced in Section VIII of the Settlement Agreement to the Test Year base revenues for the residential class. This produced the 11.36% offset. When subtracted from the aforementioned 15.9%, this resulted in an average annual net increase of 4.54% as set forth in the Settlement and the Decision. Mr. Miessner then took a disaggregated approach. He went through each of the seven adjustment mechanisms and computed what the mechanisms would have been absent the transfer of adjustor revenue requirements agreed to in the Settlement and approved by the Decision. He then applied these alternative adjustor rates, with and without the transfer, to the average residential bill which resulted in a bill reduction of 11.20%. If this slightly lower number were used by Mr. Meissner, it would have increased the average annual residential net increase to 4.7% (15.9%-11.20%=4.70%).[175]

APS also cites the testimony of Staff's witness, Mr. Liu, who used a combination of the analyses of Mr. Meissner and Mr. Padgaonkar. APS states that Staff focused on analyzing the Transition Rates because Staff was concerned that the effect of the New Rates was necessarily dependent upon customers' response to the New Rates.[176] APS states that Mr. Liu validated the adjustor transfer and

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[169] APS Opening Brief at 15.
[170] APS Opening Brief at 15.
[171] APS Opening Brief at 15, Ex APS-4 at 1; Ex APS- 5 at 2-3; Tr at 650, 659, 757.
[172] APS Opening Brief at 15; Ex APS-2 at 7-8; Tr. at 331-32.
[173] APS Opening Brief at 16; Ex APS 3 at 7-10.
[174] APS Opening Brief at 16.
[175] APS Opening Brief at 16 (citation omitted).
[176] APS Opening Brief at 17.

concluded that 11.20 percent was a reasonable estimate of the impact of the adjustor transfer. APS states further that using Mr. Padgaonkar's 15.68 percent estimate of the increase, and the 11.20 percent offset from the adjuster sweep, Staff concluded that the average annual increase for APS residential customers was 4.48 percent.[177]

Furthermore, APS states that Ms. Hobbick's examination of six customers with the most extreme outlier bill impacts, from her Attachment JEH-DR1, showed more moderate impacts for the period following their transition to the New Rates.[178] In addition, at the request of Commissioner Tobin, APS states that it analyzed the same customer population as was used in Attachment JEH-DR1 for the four months since full transition to the New Rates (May 2018 through August 2018). APS cautions that although a four-month analysis of 2018 data is not directly comparable to 12 months of 2015 Test Year data, the analysis shows that after adjusting for kWh usage differences and the number of billing days, residential customer bills on average increased 0.3 percent for the four summer months relative to the pre-Decision rates, which result, APS notes, is considerably lower than APS's 2016 Rate Case projection.[179] APS notes that part of the difference is due to the Decision's increase in rates for non-summer months as compared to the increase for summer rates, but APS also believes that part of the reason for the lower impact is positive customer response to the new TOU period (which was not factored into the original projections.[180]

In addition, APS states that the 4.54-percent increase is consistent with Commission requirements for rate cases and that the schedules APS filed in support of its rate application complied with A.A.C. R14-2-103, which dictates how base rate increases are to be calculated.[181] APS notes that, Schedule A-1 of its original filing indicated an annual increase for residential customers of 7.96 percent, which did not include or reference changes to adjustor rates after the Test Year, and Staff issued a "Sufficiency Letter" finding that the application complied with the Commission's Standard Filing Requirements. APS asserts that the 4.54 percent increase contained in the Settlement Agreement was calculated in the same way as the original 7.76 percent increase in every respect except for the lower

[177] APS Opening Brief at 17.
[178] APS Opening Brief at 17; Tr. at 666-67.
[179] *See* APS Residential Bill Impacts May-August 2018, filed on October 26, 2018.
[180] APS Opening Brief at 18.
[181] APS Opening Brief at 19.

revenue requirement of the Settlement Agreement. APS states that there is nothing in the record to indicate that the parties to the Settlement Agreement did anything other than present a projected bill impact in the manner used and required by the Commission. Nonetheless, APS states, but that if the Commission believes that there should be different or improved ways of representing base rate increases, APS will work with Staff to develop such improvements.[182]

APS also asserts that at hearing and in her Opening Brief, Ms. Champion did not contest APS's evidence that the 4.54 percent net average annual residential rate increase was calculated consistently with the 7.76 percent increase reflected on Schedule A-1 accompanying APS's original rate application.[183] Nor, according to APS, did Ms. Champion rebut or refute Staff's determination in the Sufficiency Letter dated July 1, 2016, which APS contends confirmed that the rate application conformed to the Commission's Standard Filing Requirements. APS posits that if APS calculated the 4.54 percent average residential increase consistent with the Standard Filing Requirements, it could not be "unreasonable" approximately 30 months later.[184]

In addition, APS asserts that it correctly transferred certain adjustor revenues into base rates. APS emphasizes that the adjustor transfer is revenue neutral to both the customer and the company because the revenue requirement that had been recovered by the seven adjustor mechanisms during the 2015 Test Year was transferred dollar-for-dollar to base rates. Moreover, APS asserts:

> Even if there were a lag in the reflection of a change in adjustor revenue requirements in adjustor rates, or even if adjustor revenue requirements were reduced by less than the amount agreed to in Section VIII of the Settlement Agreement (a hypothetical for which there is zero credible evidence), APS could not gain so much as a dollar of additional earnings. This is because of the existence of a balancing account feature for each of these adjustors. If there were more dollars remaining in the adjustor mechanism than would have been anticipated post-transfer, or if there were a lag between the reduction in adjustor revenue requirements and the change in adjustor rates, this would trigger a relative increase in the amount owed APS customers (or a decrease in the amount owed APS), plus interest, in the next reset of the adjustor(s). There is simply no way for APS to somehow manipulate the adjustor transfer to its benefit.[185]

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[182] APS Opening Brief at 20.
[183] APS Reply Brief at 10.
[184] APS Reply Brief at 11.
[185] APS Opening Brief at 20-21 (citations omitted).

APS asserts that Mr. Gayer's contentions that the adjustor transfer did not occur or that APS failed to zero out each of the adjustors are misplaced, as the evidence demonstrates that APS properly transferred the amounts reflected in Schedule L of the Settlement Agreement from the adjustor revenue requirements to base rate revenue requirements.

APS also asserts that Mr. Padgaonkar is not an expert in ratemaking and misunderstood how APS's adjustor rates are set, when they are set, and the effect of a transfer of revenue requirements from the adjustors to base rates. At the hearing, APS objected to Mr. Padgaonkar being offered as an expert witness on ratemaking issues, an objection APS renews in its closing brief; without waiving its objection, APS suggests that to the extent Mr. Padgaonkan's testimony remains part of the record, its evidentiary weight and probative value should be discounted accordingly.[186]

APS notes that both the DSMAC and REAC adjustor rates changed in August 2017, independent of, but at the same time as, the 2016 Rate Case.[187] APS states that when they signed the Settlement Agreement in March 2017, the settling parties could not have contemplated the timing or amount of the adjustor changes that the Commission would ultimately approve. APS argues that the concurrent timing of the adjustor changes was not inappropriate, and furthermore, because they did not stem from the Settlement Agreement in any way, it would have been inaccurate to include them in any representation of the effects of the Settlement Agreement or the Decision approving the Settlement Agreement.[188]

APS notes that the LFCR is different from all of APS's other adjustor mechanisms because the LFCR's annual revenue requirement is recovered a year in arrears, which means that when the LFCR revenue requirement increases or decreases, the LFCR rate does not reflect the increase or decrease until the following year. Rather, the changes in the LFCR revenue requirement are held in the balancing account for this adjustor until the rate is reset.

APS asserts that the working of the LFCR mechanism does not mean that customers failed to benefit from the LFCR transfer starting in August 2017 because the LFCR revenue requirement

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[186] APS Opening Brief at 22.
[187] APS Opening Brief at 23; *see* Decision No. 76312 (August 24, 2017) (APS 2017 DSM implementation Plan); Decision No. 76313 (August 24, 2017) (APS 2017 RES Implementation Plan).
[188] APS Opening Brief at 23.

declined immediately by $46 million per year.[189] APS notes that the revenue reduction is reflected in the Company's LFCR request filed on February 15, 2018, which provides an overall decrease in the LFCR adjustor.[190] According to APS, without the revenue transfer in August 2017, the pending LFCR request would be for a "substantial increase in that rate."[191] In addition, APS states, because the rate per kWh by which APS measures its Lost Fixed Costs declined immediately for each kWh sale lost to Energy Efficiency and Renewable Energy programs (from $0.031111 per kWh to $0.025394 per kWh), the future growth of the LFCR revenue requirement starting from the reduced post-transfer level will be slowed.[192]

APS states that Mr. Padgaonkar's analyses, particularly with respect to the TCA, did not properly consider events that occurred between the 2015 Test Year and the date of the Decision approving the Settlement Agreement. APS asserts:

> The amount in Section VIII of the Settlement Agreement that was to be transferred from the TCA to base rates was based on the respective amounts collected during the 2015 Test Year from residential ($90.6 million) and non-residential ($38.2 million). That constituted 6.09% of 2015 Test Year residential class base revenue. However, the allocation of revenue requirement responsibility for the TCA changes each June 1st based on a filing made with FERC on or before May 15th. The June 1, 2017 TCA allocated a higher percentage (61.43%) of the total transmission service revenue requirement to residential customers than it did in the 2015 Test Year (58.95%). And so when the $90.6 million was transferred (credited) from the TCA residential revenue requirement to base rates, the percentage impact was reduced to roughly 5.2% because the denominator (total residential transmission revenue requirements) was larger, even though the dollars transferred (the numerator) remained consistent with the Settlement.[193]

APS argues that it provided extensive evidence establishing that its handling of the adjustor transfers was proper and complied with the Settlement Agreement, while Ms. Champion failed to provide evidence to the contrary.

APS states that the Commission should recognize that no party has conducted an "actual" analysis of a full year of residential customer experiences on the rates approved in Decision No. 76295.

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[189] Tr. at 537, 615-16.
[190] Tr. at 551-53. On February 15, 2018, APS filed an Application to approve Revision 7 of the Adjustment Schedule Lost Fixed Cost Recovery mechanism effective May 1, 2018, in Docket Nos. E-01345A-16-0036 and E-01345A-16-0123.
[191] APS Opening Brief at 24.
[192] APS Opening Brief at 24.
[193] APS Opening Brief at 24-25 (citations omitted).

APS states that Mr. Padgaonkar's "sample" and analyses were based on a hypothetical under which every residential customer was placed on his/her "most like" rates. APS asserts that the hypothetical is wrong factually, beyond any reasonable expectation of customer behavior, and assumes that consumption levels and patterns would remain unchanged from 2015.[194] APS asserts that Mr. Padgaonkar's analysis made no allowances for changes in customer behavior after 2015.[195] APS criticizes Mr. Padgaonkar's claim that he confirmed his impact analysis based on a sample of customer rate selections as of May 1, 2018,[196] because rate selection is an on-going process and the mixture of customer rates would have been different on April 30th and yet again on May 2nd.

APS asserts that it is impossible for Test Year results to replicate themselves exactly in the future, and argues that Ms. Champion's focus on "actual" rate impact, despite Arizona being a historical Test Year jurisdiction is a red herring, as the inability to predict the future perfectly does not and cannot serve as an indictment of the process or the results, and does not constitute "changed circumstances."[197] APS argues that the Commission cannot lawfully ignore or change procedural or substantive ratemaking requirements for APS alone *ex post facto*.

**3. Is there evidence that APS Overearning?**

APS argues that due to a misunderstanding of ratemaking, Ms. Champion is wrong when she claims that APS is collecting more revenue than authorized in Decision No. 76295.[198]APS states that rate orders do not set limits on the amount of revenue that utilities can collect and that the revenue requirement set in the 2016 Rate Case was based upon historical data and not projected or future revenue requirements. APS asserts that the $148.25 million non-fuel base rate revenue requirement in the Settlement Agreement was based upon 2015 Test Year conditions and does not, and cannot, take into consideration post-Test Year changes, including, but not limited to, factors such as weather, number of customers, mix of customers, usage and demand patterns, or customer rate selection changes. Thus, according to APS, a comparison between Test Year revenues and subsequent year

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[194] APS Reply Brief at 14.
[195] APS Reply Brief at 14-15; Tr. at 943-47.
[196] Ex C-1 at 21-23; Tr at 250-52.
[197] APS Reply Brief at 15 (*citing* A.A.C. R14-2-103; *Freeport Minerals Corp. v. Ariz. Corp. Comm'n*, 244 Ariz. 409, 411 (App. 2018)).
[198] APS Reply Brief at 18.

revenues, standing alone, is not determinative of anything other than the difference between the numbers.[199] APS argues that the relevant issues are whether APS is complying with its filed rates and whether it properly designed rates to collect the increased revenue requirement set in the 2016 Rate Case.

APS asserts that Ms. Champion presented no credible evidence that APS is overearning. APS states that Mr. Padgaonkar conflated revenue with earnings in his analysis.[200] According to APS, an increase in revenue does not necessarily equate to an increase in earnings, or vice versa, and temporary fluctuations in collections within adjustor mechanisms have no effect on earnings.[201] APS argues that Mr. Padgaonkar also erroneously relied on portions of SEC filings make by Pinnacle West to imply that APS was overearning, although, Mr. Padgaonkar did not know how the information was calculated or reported by Pinnacle West.[202]

APS asserts that although Ms. Champion's witness referred to SEC filings by APS's parent company to show that APS is receiving more than the level of increased revenues contemplated by the Settlement Agreement, in actuality, Mr. Padgaonkar's calculation serves to verify that actual results are in line with "extrapolations of historical data from the 2015 Test Year."[203] Moreover, APS argues, "even if there were a divergence in revenues in 2017-2018 from the 2015 Test Year calculation not explained by changes in customers, usage, etc., this would not mean APS was in any sense overearning. Revenues are not the same as earnings."[204]

APS points to the testimony of Mr. Snook to support its claim that APS is not overearning. Mr. Snook noted that in the *Four Corners SCR* proceeding (a second phase of the 2016 Rate Case conducted to determine the costs associated with the Selective Catalytic Reduction environmental controls at the Four Corners Power Plant), Staff testified that APS was not overearning.[205]

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[199] APS Reply Brief at 18-19.
[200] APS Reply Brief at 19-20.
[201] APS Reply Brief at 20 *citing* Tr. at 510-11, 617.
[202] APS Reply Brief at 20 citing Tr at 154.
[203] APS Opening Brief at 25-26.
[204] APS Opening Brief at 26.
[205] APS Opening Brief at 26; Tr. at 762-63. The hearing for the *Four Corners SCR* occurred September 5-7, 2018.

**4. Did Mr. Woodward present supporting evidence or authority for his position?**

APS argues that Mr. Woodward presented no evidence, and cited no authority for the proposition that in a rate case, all rates must be adjusted the same or within "some arbitrary band around the mean."[206] Moreover, APS asserts, because Mr. Woodward was an intervenor in the 2016 Rate Case, and his arguments could have been raised in that case, they constitute an impermissible collateral attack on Decision No. 76295.[207]

APS contends that a critical review of Mr. Woodward's testimony actually supports the reasonableness of the approved rates because Mr. Woodward[208] (1) selected the plan that would result in his best rate,[209] (2) changed his usage patterns,[210] and (3) saw a reduction in his rates.[211] APS argues that Mr. Woodward's complaint that he cannot "offset" the rate impact any further than he has does not account for the $1.33 increase in the monthly Basic Service Charge for customers on the R-XS rate plan. Additionally, APS argues that Mr. Woodward's position, which "rejects the Decision's consideration of established ratemaking principles—rate parity, cost causation and customer choice—as unethical,"[212] is irrelevant to the issue in this case, which is whether the current rates are reasonable. APS states that Mr. Woodward is a prime example of a customer whose bill impact is significantly lower than the 4.54 percent average.

**5. Did Mr. Gayer's analysis account for the adustors?**

APS argues that Mr. Gayer's challenges to the rates adopted in Decision No. 76295 reflect a fundamental misunderstanding of ratemaking and how adjustor mechanisms work.[213] APS asserts that Mr. Gayer's testimony and exhibits contain errors and that his analysis does not properly account for the adjustor sweep or any adjustor changes outside of the 2016 Rate Case. APS states that Mr. Gayer's claims should be denied because he offers no credible evidence to support his contentions that the average bill impact exceeds 4.54 percent, and that the adjustor sweep did not occur. Furthermore, APS

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[206] APS Opening Brief at 27.
[207] APS Opening Brief at 27; APS Reply Brief at 18.
[208] APS Reply Brief at 16.
[209] Tr. at 648-49.
[210] Tr at 713, 725.
[211] Tr at 640, 642.
[212] APS Reply Brief at 17 (*citing* Woodward Opening Brief at 3-5).
[213] APS Opening Brief at 27; *see also* APS Reply Brief at 16.

argues that Mr. Gayer's claims should be denied as a matter of law because he has not suffered any damages, and his claims are an impermissible collateral attack on Decision No. 76295 because Mr. Gayer was an intervenor in the 2016 Rate Case.

**6. Did APS appropriately implement the New Rates and transition customers to their New Rates?**

APS asserts that one of the cornerstones of the 2016 Rate Case was to bridge Arizona to a clean, sustainable energy future and to modernize its residential and small commercial rate design to encourage new distributed technologies and begin to address inequalities caused by volumetric rate design and net energy metering.[214] APS states that it proposed to remedy the cost-shift caused by solar net metering and to revamp its residential rates by (1) sending better price signals to customers, (2) decreasing the cost-shift, and (3) creating rates that would sustainably accommodate new distributed technologies. In its 2016 Rate Case Application, APS requested that all residential customers, except for the smallest users, be required to move to three-part rates with a demand component, that the Basic Service Charge be more cost-based, and that net metering be eliminated for new customers. APS states that to support these changes, it proposed an extensive education and outreach plan.

APS states that its initial rate design plan faced significant opposition in the 2016 Rate Case proceeding, but that through the settlement process, the parties were able to reach a workable compromise that APS believes made gradual progress toward better aligning residential rates with costs by eliminating net metering and inclining block rates, balancing the ratios between on-peak and off-peak rates, and implementing a new suite of seven residential rates that allowed customers to choose type of rate and provided a six-to-nine month Transition Period for APS to provide education and outreach about the New Rates.[215] APS states that the Settlement Agreement specifically required APS to do the following:

- Provide customers with information on options that would minimize their bills;
- Report to the Commission at least 90 days before transitioning customers to New Rates, indicating the total number of customers who had not made a rate selection;

[214] APS Opening Brief at 28.
[215] APS Opening Brief at 29.

- Allocate and spend $5 million in DSMAC funds "for education and to help customers manage New Rates and rate options, including services and tools available to customers to help them manage their utility costs;" and
- File an outreach and education plan and provide an opportunity for stakeholders to review and comment on the draft plan prior to filing.[216]

APS claims that the education and outreach mandate reflected an understanding of the scope of the rate changes and importance of customer education. APS states that it complied with each mandate, as contained in its response to Commission Dunn's October 3, 2018, letter.

APS states that in compliance with its obligations, it provided customers with information about their choices and their best rates ("best rate letter").[217] The best rate letter explained the six main residential service plans – three flat rate options for customers of various sizes, one TOU rate, and two demand rates; contained energy saving tips; and based on recent usage, identified each customer's most economical plan. In Ms. Champion's best rate letter, APS informed her that her most economical plan was the Saver Choice Max, while the rate most like the one she was on was the Saver Choice plan. According to APS's projections in the best rate letter, if Ms. Champion moved to her best rate, she would save about $105 per year over her current plan, while if she moved to her "most-like" rate, she would likely pay approximately $57 more per year.[218]

APS states that customer choice was an important tenet of the Settlement Agreement. According to APS, approximately 20 percent of APS's customers selected one of the New Rates prior to or during the Transition Period, with the remainder of customers being transitioned to the rate most like their current rate plan.[219]

APS states that in addition to the personalized best rate letter, it utilized multiple on-bill messages and bill inserts, aps.com pages, email, radio advertisements, and community outreach to inform customers of the changes. APS states that it offers a rate calculator that allows customers to

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[216] APS Opening Brief at 29-30 (*citing* Decision No. 76295 Ex A (Settlement Agreement at §§ 26.1, 27.1). In addition, APS notes that the Commission required the draft outreach plan to include proposed forms of notice to provide customers with bill impacts of the different rate options.

[217] APS Opening Brief at 31.

[218] APS Opening Brief at 31. Ms. Champion opted to remain on the most-like rate.

[219] APS Opening Brief at 31.

check how their current rate plan compares to any of the other plans for which the customer is eligible.[220]

APS states that to date, it has spent approximately $5 million on outreach and education efforts and that it continues to provide ongoing education through normal channels. APS asserts that neither Ms. Champion nor Mr. Gayer has offered evidence in opposition to APS's education and outreach efforts and that Mr. Woodward has merely opined that customers do not require education.[221]

**7. Should the Commission dismiss the Complaint as a matter of law?**

APS asserts that because the Champion Complaint was brought pursuant to A.R.S. § 40-246, potential remedies are prospective only, and complainants are limited to the remedies lawfully permitted under that statute, which, APS argues, do not include a rehearing of the 2016 Rate Case.[222] APS argues that Arizona law prohibits such a collateral attack on a final Commission decision, including a challenge by a person who was not a party in the underlying docket. APS cites the Arizona Supreme Court in *Miller* in support of its claim that Ms. Champion may only assert that the Commission was without jurisdiction to enter the Decision:

> Parties to an administrative proceeding may seek judicial review on significantly broader grounds than litigants who collaterally attack a final decision. An aggrieved party to the underlying Commission proceedings, for example, might argue on appeal that the Commission's decisions were not supported by substantial evidence, were arbitrary and capricious, or were legally erroneous. In a collateral attack, though, the challengers may question only the Commission's jurisdiction.[223]

APS asserts that Ms. Champion has not claimed that the Commission did not have jurisdiction to enter Decision No. 76295, and furthermore, that Article XV of the Arizona Constitution clearly grants the Commission such jurisdiction.

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[220] APS Opening Brief at 32.
[221] APS Opening Brief at 32.
[222] APS Opening Brief at 33-34; *see also* APS Response filed September 25, 2018, to letters filed by Commissioners Tobin and Burns September 21 and September 24, 2018, respectively.
[223] 227 Ariz. 21, 24 (App. 2010).

APS notes that the Arizona Attorney General and Arizona jurisprudence have clarified that a complainant like Ms. Champion who challenges the reasonableness of final, existing rates may only obtain an order requiring that the utility file a new "full-scale rate hearing."[224]

APS asserts that "a full-scale rate hearing" can only mean a hearing conducted to decide a rate application filed under A.A.C. R14-2-103, and not a rehearing under A.R.S. § 40-253. APS states that a "rehearing," by definition, permits the Commission to review part of a final Commission decision, and thus, need not be "full-scale." Furthermore, APS states, only a party to the rate case in which the Commission renders its decision can seek rehearing and must do so within 20 days of that decision.[225] APS states that here, Ms. Champion was not a party to the 2016 Rate Case and did not file her complaint within 20 days of the Decision.[226]

APS cites the Court of Appeal's conclusions in *Scates,* in which the court held:

> A.R.S. §§ 40-246 and 249 authorize proceedings known as "complaint proceedings" with respect to rates. An opinion of the Arizona Attorney General suggests that if a complaint proceeding is instituted and the Commission determines that a hearing with respect to a rate change is warranted, then restricted procedures such as those followed by the Commission in this case would be inappropriate.[227]

APS argues that if A.R.S. § 40-246 permits rehearing, or some other proceeding less than a full-scale rate case, it would have been unnecessary for the *Scates* court to comment on A.R.S. § 40-246 proceedings. APS asserts that only a rate case filed under A.A.C. R14-2-103 requires the unrestricted and constitutionally mandated examination of rates discussed at length in *Scates*. Moreover, APS argues, rate cases cannot simply be reopened in collateral proceedings. APS asserts that "[w]hen the Commission approves a rate, and that rate becomes final, it "may not on its own initiative or as the result of collateral attack make a retroactive determination of a different rate and require reparations."[228]

APS argues that the alternative is untenable because if 25 consumers were allowed to seek rehearing of any rate case, at any time, the floodgates of litigation would open, every ratemaking

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[224] APS Opening Brief at 35 (*citing* Ariz. Op. Att'y Gen. No. 69-6 at 3 (February 5, 1969); *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 536, n.1 (App 1978); *Mountain States Tel. & Tel. Co. v. Ariz. Corp. Comm'n*, 124 Ariz. 433, 436 (App.1979)).

[225] A.R.S. § 40-253(A).

[226] APS Opening Brief at 35.

[227] *Scates,* 118 Ariz. at 536, n.1.

[228] APS Opening Brief at 36 (*citing Mountain States*, 124 Ariz. at 436).

decision could be litigated twice or more, and complainants would avoid appellate review under A.R.S. § 40-254.01. APS argues that no statutory language supports a contrary outcome and that nothing in A.R.S. § 40-246 suggests that the Legislature intended the statute to be used as a means of circumventing the strict rehearing and appeal requirements for rate cases established in A.R.S. §§ 40-253 and 40-254.01.

Additionally, APS argues that Messrs. Gayer and Woodward are also barred form collateral attacks on Decision No. 76295. APS notes that both intervened and actively participated in the 2016 Rate Case, with Mr. Gayer choosing not to file an application for rehearing and Mr. Woodward seeking rehearing and appealing the Decision under A.R.S. § 40-254.01. APS states that Mr. Woodward challenged and sought the elimination of significant portions of rate design under the Decision (Section V.c.ii.10) as "unlawful, unreasonable, and unsupported by substantial evidence."[229] APS argues that neither Mr. Gayer's nor Mr. Woodward's attack on the Decision is permitted under Arizona law—Mr. Gayer may not cure his failure to appeal Decision No. 76295 in this proceeding, and Mr. Woodward may not amend his appeal in this proceeding.

APS argues that the complainants also are not entitled to relief under A.R.S. § 40-252, as Ms. Champion's filing never invoked the statute, and the mention of A.R.S. § 40-252 by Ms. Champion's attorney in his opening statement did not amend Ms. Champion's complaint and cannot "transform" this docket into an A.R.S. § 40-252 proceeding.[230] APS asserts that the statute's plain language authorizes only the Commission to commence an A.R.S. § 40-252 proceeding. APS concedes that, presumably, a person could request that the Commission act under A.R.S. § 40-252, but asserts that here, proper notice was not provided, and furthermore, the Commission should not do so. APS asserts that "[r]eopening any part of APS's last rate case would jeopardize the delicate balance underlying the Settlement Agreement approved in the Decision."[231]

APS contends that neither the law nor the evidence supports applying A.R.S. § 40-252.[232] First, APS asserts that the Commission has not given any notice to APS and other affected parties to the 2016

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[229] APS Opening Brief at 37-38.
[230] APS Opening Brief at 39 (*citing James P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz. 426, 430 (1983)).
[231] APS Opening Brief at 39.
[232] APS Opening Brief at 39-47.

Rate Case under A.R.S. § 40-252, identifying any issues arising from the Decision that would merit its rescission, amendment, or modification. APS argues that because Ms. Champion invoked A.R.S. § 40-246, the only outcome of which APS could have had notice are those that can be ordered under A.R.S. § 40-246. APS contends that the reference to A.R.S. § 40-252 by Ms. Champion's counsel's on the first day of hearing, after the close of discovery, after the filing of all testimony, and after APS had developed a trial strategy, cannot serve as notice.[233]

Furthermore, APS states, it is not the only party to the 2016 Rate Case docket. There were 28 other parties to the 2016 Rate Case who presented evidence in support of the Settlement Agreement and whose interests will be affected by any Commission action taken under A.R.S. § 40-252. APS contends that the parties to the Settlement Agreement must be given adequate notice, sufficient time to prepare a defense, and the opportunity to present evidence to controvert the Commission's "preliminary basis" for considering a possible rescission, amendment, or modification of Decision No. 76295.

Second, APS argues that Ms. Champion has not asserted sufficient facts or circumstances to warrant exercising Commission authority under A.R.S. § 40-252. APS states that Arizona courts have made clear that the exercise of the Commission's authority under A.R.S. § 40-252 requires an affirmative showing that (1) the public interest as a whole would benefit, and (2) changed circumstances or conditions now exist that were not present at the time of the subject decision.[234] APS asserts that the "public interest" prong of the A.R.S. § 40-252 analysis is different than the public interest considered in the underlying action, because it is the public's interest in the integrity and finality of Commission decisions. APS notes that in *James P. Paul*, the Court found that the Commission acted beyond the scope of its authority in reopening its Decision under § 40-252 when it treated the cost to customers as determinative of the public interest.[235] Thus, APS argues, A.R.S. § 40-252 should be used judiciously and sparingly.[236]

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[233] APS Opening Brief at 40.

[234] APS Opening Brief at 40-41. (*citing James P. Paul* 13 Ariz. at 431 ("The public interest is best served though decisional finality, and the Commission cannot reopen a proceeding and modify a final order without affirmatively demonstrating that conditions have changed and are sufficiently important to trump that public need.")

[235] *James P. Paul,* 137 Ariz. at 431.

[236] APS Opening Brief at 41. APS Opening Brief at 42. APS cites a number of decisions in other jurisdictions which it believes have placed similar constraints on public utility commissions. *See Brink's Inc. v. Pennsylvania Pub. Util. Comm'n*, 328 A.2d 585, 584 (Pa. Comwlth. Ct. 1974)(holding that '[t]he proper function of a [petition to modify a final order] is to allow P.U.C. to reconsider a previous order in the light of newly discovered evidence or a change in circumstance" and that

APS asserts that Ms. Champion did not present evidence sufficient to support a claim under A.R.S. § 40-252, as she does not demonstrate changed circumstances or conditions.[237] APS contends that Ms. Champion's witness: (1) confirmed the revenue requirement in Decision No. 76295;[238] (2) confirmed the 15.9 percent adjustor sweep;[239] (3) could not rebut evidence that the adjustor sweep had occurred correctly and was revenue neutral; (4) included ongoing adjustor increases (but not decreases) that occurred outside the 2016 Rate Case; (5) provided no evidence to rebut APS's customer education and outreach efforts; and (6) never disputed that the rates ordered by the Decision were based on a cost-of-service study and accurately reflected a level of cost allocation that the settling parties and the Commission deemed appropriate.

APS argues that Ms. Champion disagrees with Decision No. 76295 because she believes that APS's rates are too high. APS contends that her belief is faulty. APS argues that because Arizona utilizes a historic Test Year, forecasts can only ever be predictions, do not reflect actual conditions, and cannot justify changing rates retroactively.[240] APS contends that Ms. Champion ignores the purposes of the New Rates--to move toward cost-based rates and mitigate subsidies, to effectuate energy efficiency, to send better price signals, and to emphasize customer choice—and that she ignores that modernization of APS's rates and migration of customers to their best rates will take time.[241]

APS responds as follows to claims that some customers would receive substantially greater than a 4.54 percent increase:

> Ms. Champion's averaging was without regard to customer choice and actual behavior, which could substantially mitigate, if not eliminate, the increase shown on paper—customer choice and behavioral changes that

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the commission rightfully refused to reopen a final decision absent "the presence of new evidence or of a change in circumstances which would justify modification."); *State ex rel. Utilities Commission v. North Carolina Gas Serv.*, 494 S.E.2d 621, 625 (N.C. App. 1998)(holding, under a statute that permits the public utility commission at any time, "upon notice" to the public utility and to the other parties of record affected, and "after giving [them] an opportunity to be heard. . . to rescind, alter or amend any order or decision made by it [,]". . .that "[i]n the absence of any additional evidence or a change in conditions, the commission has no power to reopen a proceeding and modify or set side an order made by it."); *West Texas Utilities Co. v. Office of Public Utility Counsel,* 896 S.W.2d 261, 269 (Tex. App. 1995)(providing that a public commission statute vests the commission with continuing power to regulate, but holding that the "well-recognized regulatory concept of 'changed circumstances' [requires that] [a]bsent a showing of changed circumstances, the Commission is generally prohibited from revisiting its prior final orders.").

[237] APS Opening Brief at 43.

[238] Tr. at 156-57.

[239] Tr. at 162; Ex C-1 at 20.

[240] APS Opening Brief at 45.

[241] APS Opening Brief at 45-46.

> APS has been and continues to promote heavily. The Commission and the Settling Parties always understood there would be customer outliers above and below the average, but agreed not to force customers onto their best rates when balancing competing interest. Instead, the parties opted to fund customer education and outreach to encourage thoughtful customer decisions regarding rates and energy use management.[242]

In response to assertions of rate shock, APS states:

> At its core, Ms. Champion's complaint hinges on her dissatisfaction with the Commission's policy to achieve rate parity through the integration of cost-based rates and plans that address energy usage and efficiency. A customer's dislike of an administrative policy decision is not sufficient to show changed circumstances under Section 252, and is not a legitimate basis to rescind or alter the Decision.[243]

APS asserts that rescission or modification of Decision No. 76295 would not serve the public interest because the 2016 Rate Case resulted in "tremendous" public benefits, including (1) APS's agreement not to file a new general rate case before June 1, 2019; (2) a program to expand access to utility-owned rooftop solar for low income and moderate income Arizonans, Title 1 Schools, and rural governments; (3) a buy-through rate for Industrial and large General Services customers; (4) a refund of $15 million through the DSMAC; (5) continuation of crisis bill assistance; (6) more off-peak hours and holidays for time-differentiated rates; (7) an experimental pilot technology rate; (8) updated rate designs with rate options; (9) an education plan with outreach efforts; (10) a rate adjustment mechanism to pass through income tax effects to customers; (11) additional discounts for schools and military customers; and (12) resolution of solar distributed generation issues.

APS also asserts that rescission of or changes to Decision No. 76295 would void the Settlement Agreement and unwind the balance reached by the Settling Parties. APS claims that the Commission cannot isolate residential rates without impacting other key provisions of the Settlement Agreement.[244] Further, APS states, rescission would not achieve the outcome (lower rates) Ms. Champion wants because it would involve a new rate case, which cannot be retroactive.

**8. What are appropriate remedies?**

APS asserts that Ms. Champion, Mr. Gayer, and Mr. Woodward have not demonstrated that APS caused them injury or damage. APS states that the evidence shows that Ms. Champion elected to

[242] APS Opening Brief at 46.
[243] APS Opening Brief at 47.
[244] APS Opening Brief at 49.

stay on a rate plan that, based on her historic usage, would be more expensive than alternative plans. APS also states that Mr. Gayer and Mr. Woodward both experienced bill impacts "well within the anticipated range."[245]

APS notes that Ms. Champion alleges that "rate shock" and "actual" rate impacts were not what the Commission and parties to the Settlement Agreement contemplated and asks the Commission to find the approved rates to be "unreasonable, to rescind Decision No. 76295 under A.R.S. § 40-252, and to conduct a full rate hearing on APS's original rate application;[246] that Mr. Woodward seeks the same result, but also asks for refunds for being overcharged;[247] and that Mr. Gayer asks for rescission and transition back to 2012 rates.[248] APS argues that all of these proposed remedies fail factually and legally.[249]

First, APS states, Ms. Champion did not present any evidence on the intent of the Settlement Parties or the Commission. APS argues that in Arizona, rate cases are not decided based on future impact projections and are not rescinded and restarted due to subsequent actual impacts.[250] APS asserts that by law, the Commission and Settling Parties could only "contemplate" 2015 Test Year data and set rates based on that Test Year.[251]

Furthermore, APS argues that the law is clear that the Commission may not engage in retroactive ratemaking as suggested by the complainants under either A.R.S. § 40-246 or § 40-252.[252] APS acknowledges that the Commission may order APS to file a new rate case, but asserts that it may not "'start over' as if it were 2015 by taking APS back to zero, ordering refunds, implementing surcharges, and/or rewriting the rate design it had previously approved."[253] According to APS, the Settling Parties and the Commission understood that Decision No. 76295 made progress towards cost-

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[245] APS Opening Brief at 50.
[246] Champion Opening Brief at 12.
[247] Woodward Opening Brief at 6-7.
[248] Gayer Opening Brief at 10.
[249] APS Reply Brief at 22.
[250] APS Reply Brief at 22 (citing *James P. Paul Water Co.*, 137 Ariz. 426, 429 (1983); *Freeport Minerals Corp.*, 244 Ariz. 409).
[251] APS Reply Brief at 22-23.
[252] APS Reply Brief at 23 (*citing Mountain States Tel & Tel Co. v. Ariz. Corp. Comm'n*, 124 Ariz. 433, 436 (App 1979); *In re Arizona Pub. Serv. Co.*, 77 P.U.R. 4th 542, 565 (Ariz Corp. Comm'n Oct 9, 1986)).
[253] APS Reply Brief at 23.

of-service parity and the reduction of rate subsidization and that there would be customers with higher or lower rates as a result.

According to APS, it is undisputed that the annual average bill impact referred to in Decision No. 76295 was calculated consistent with the Commission's own Standard Filing Requirements.[254] APS notes that the majority of APS customers have not yet had a full year on the New Rates. APS asserts that it is important to note that the 4.54 percent average was a figure that (1) was derived from a composite annual class average; (2) was projected and not a guarantee of a specific bill impact; (3) was based on customer usage in 2015; (4) had an average load factor and the same average split between peak and off-peak usage and summer versus winter usage as in the 2015 Test Year; and (5) was without regard to any change in adjustors occurring after 2015.[255] APS argues that it would be contrary to ratemaking principles to find wrongdoing even if customers' actual bill impacts in 2017 and 2018 differed from the 4.54 percent projection. APS asserts that there is no evidence that APS did not properly implement Decision No. 76295 in accordance with the terms of the Settlement Agreement.

**9. Recommendation for Future Rate Cases.**

APS acknowledges and supports various suggestions regarding future customer education and outreach and states that it supports solutions to empower and educate customers about their rate options.[256]

To the extent that the Commission believes that continued efforts should be made to improve transparency in the ratemaking process, APS recommends the following:

- Along with the H Schedules required in every rate case under A.A.C. R14-2-103, utilities, and other parties, could provide a "bin analysis" of base rate bill impacts for residential customers similar to the analysis offered by APS witness Ms. Hobbick in this matter.[257] APS states such analysis would provide a detailed summary view of rate impacts more than what is currently required under the

[254] APS Opening Brief at 50.
[255] APS Opening Brief at 51.
[256] APS Reply Brief at 24.
[257] APS Opening Brief at 52; APS Reply Brief at 24; Ex APS-4 Dir at Attachment JEH-1DR. APS suggests that the parties could also provide such analysis upon the issuance of a Recommended Opinion and Order ("ROO") to reflect the ROO's proposed findings.

Standard Filing Requirements and could be used to develop "customer-facing" information about the potential range of bill impacts, rather than the bill impact for an average customer.

- Stakeholder discussions could be held to brainstorm ways to better communicate the impact of base rate increases.
- Because low-income customers face a heavier burden than the average residential customer from rate increases, APS will reexamine its low-income discount program and crisis bill funding in its next rate case.
- Additional flexibility should be offered regarding rate switching to address customer concerns regarding whether they are on their best rate. Thus, as part of the outcome of this proceeding, APS proposes that the Commission allow customers to change plans one additional time, in order to provide another opportunity for customers to migrate to their best rate and more time for customers to learn how best to manage their usage on demand and TOU plans, while still limiting the possibility of rate selection "gaming."[258]

APS states that it has concerns about some of the suggestions for future rate case processes offered by other parties. Currently, APS notes, all customers have the opportunity for a one-to-one consultation through APS's contact center. Thus, APS questions the need to meet in person with individual customers and states that face-to-face meetings would be administratively burdensome and extremely costly. Nonetheless, APS states that it remains open to providing direct, personalized outreach for specific segments of customers (such as individuals who under prior rates managed their demand but appear not to have adjusted to the new peak hours, or customers experiencing extreme bill impacts) when a more personalized outreach might be warranted. APS states that it is willing to work with Staff and RUCO to identify these potential groups.[259]

In addition, although APS is offering to provide customers an opportunity to move to another rate, it states that it cannot support Ms. Champion's recommendations that in all future rate cases,

[258] APS Opening Brief at 53.
[259] APS Reply Brief at 25.

customers be allowed to remain on old rate plans indefinitely and that there be no restrictions on customers switching or moving between rate plans. APS argues that such suggestions do not reflect sound policy and are not in the public interest because they would preclude a utility from ever freezing or closing an outdated rate plan, would stymie progress on rate design (e.g., by limiting the ability to update on- and off-peak periods or add shoulder periods); and would create customer confusion as additional rate plans are added while old rate plans continue without end.[260]

APS states that it is in the public interest to have rates evolve to become more reflective of costs, to reduce subsidies, and to decrease overall costs and improve system efficiencies, and it is important to be able to place customers on new rates quickly and efficiently. In addition, APS believes that given seasonal price variations in rates, it is untenable to allow customers to change rates multiple times a year.[261] APS also opposes recommendations for "risk-free guarantees, rebilling analyses or reconciliations between actual and forecasted rate impacts."[262] APS states that such proposals are inconsistent with the use of historical test years and, absent a full revenue decoupling regime, would create increased risk of revenue instability and ultimately increased costs for customers.

APS also opposes the recommendation to prohibit settlements and limit changes to adjustor mechanisms.[263] APS contends that just because rates are contained in a settlement agreement does not mean there was no evidentiary foundation for the rates or that the rates are not just and reasonable. In this case, APS argues, the evidence would support a rate increase much greater than was ultimately agreed to by the parties, and the Settlement Agreement provided additional public benefits that would not have been achieved without a settlement, such as the AG-X, Sun II, and crisis bill funding.[264]

Finally, regarding Ms. Champion's proposed restriction to adjustor mechanisms, APS states that the proposal is inconsistent with the express terms of the plans of administration for some of the adjustors and is an unnecessary restriction on the Commission's power to adjudicate a rate case. [265]

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[260] APS Reply Brief at 26.
[261] APS Reply Brief at 26.
[262] APS Reply Brief at 26.
[263] APS Reply Brief at 26-27.
[264] APS Reply Brief at 27 (*citing* Decision No. 76295, Ex A at §§ 23.1 *et seq.*, 28.1 *et seq.*, 29.3).
[265] APS Reply Brief at 27.

**E. Staff**

**1. Nature of Proceeding under A.R.S. § 40-246 and Burden of Proof.**

According to Staff, A.R.S. § 40-246 provides consumers with a mechanism to call into question the reasonableness of rates but does not mandate any particular remedies upon a complainant's demonstration of unreasonableness.[266] Staff notes that per Arizona Attorney General Opinion 69-6, the Commission is not required to hold a full-scale rate hearing upon the filing of a complaint under A.R.S. §40-246(A). Rather, Staff states, the statute is designed to initiate an inquiry by the Commission into the reasonableness of the rates and charges of a public service corporation. Staff asserts that the process under A.R.S. § 40-246 involves (1) an initial hearing to determine whether the complainant has met its burden, and (2) if the burden of proof has been met, the Commission instituting appropriate remedies.[267]

Staff asserts that given the Commission's exclusive and plenary authority over ratemaking, the Commission has broad discretion in resolving the complaint and could reasonably invoke remedies that may include, but are not limited to, a full-scale rate case.[268] Thus, Staff asserts, the Commission has the ability to reopen and modify the prior Commission decision pursuant to A.R.S. § 40-252.[269]

Staff notes that there is a strong presumption that the established rates are just and reasonable.[270] According to Staff, that is why to successfully challenge a Commission ratemaking decision, one must demonstrate by a "clear and satisfactory" showing that the Commission order is unlawful or unreasonable.[271] Thus, Staff states, if Ms. Champion had been a party to the 2016 Rate Case, she would be required under A.R.S. § 40-254 to demonstrate by clear and convincing evidence that the decision of the Commission was unreasonable. But because Ms. Champion was not a party to the 2016 Rate Case, and is challenging the reasonableness of the rates under A.R.S. § 40-246, Staff questions whether a lower standard or burden of proof is warranted, namely the preponderance-of-the-evidence standard

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[266] Staff Opening Brief at 3.
[267] Staff Opening Brief at 4.
[268] Staff Opening Brief at 4-5.
[269] Staff Opening Brief at 4-5.
[270] Staff Opening Brief at 5; s*ee Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 154 (1956) (noting the Commission's legislative discretion in exercising its ratemaking authority to determine what constitutes a just and reasonable rate, which is to be disturbed upon judicial review only upon a showing that the Commission's conclusion was arbitrary, unsupported by substantial evidence, or otherwise unlawful).
[271] Staff Opening Brief at 6 (*citing* A.R.S. § 40-254.01(E) (As used in the statute, "clear and satisfactory" means "clear and convincing.").

used in civil lawsuits. Staff believes that a reasonable argument can be made for either the clear-and-convincing-evidence standard or the preponderance-of-the-evidence standard in this case.[272]

In this case Staff asserts that, "for purposes of determining whether a complaint should go forward under A.R.S. § 40-246, Staff would support the use of the 'preponderance of the evidence' standard."[273] However, Staff asserts that complainants in this case have not met their burden under either standard.[274]

**2. Was the Average Bill Impact in the Settlement Agreement Accurate?**

Staff's review and evaluation of the analyses performed by Ms. Champion and APS led Staff to verify that the net rate case bill impact for the average residential customer was 4.48 percent.[275] Staff states that its conclusion is based on a statistically valid sample demonstrating a 15.68 percent base rate bill impact less the adjustor transfer impact of 11.20 percent. Staff's witness, Mr. Liu, explained that a randomly selected APS residential customer might not experience the exact 4.54 percent bill impact contained in the Settlement Agreement because the average is premised on the following assumptions:

- It is for an "average" residential customer based on the 2015 Test Year;
- The "average" customer will keep the same usage and behavior as in the Test Year;
- The adjustor transfer takes place at the same time as the New Rates become effective; and
- The cost and billing determinants used to establish each adjustor rate remain the same as in the Test Year.

Mr. Liu testified that "[i]n order to conduct a solid analysis to verify the reasonableness of the expected bill impact, at least these four assumptions must be understood and accommodated."[276] In addition, according to Staff, changes in each customer's usage and behavior need to be controlled to isolate the effects of the rate changes when recalculating bills. Staff also asserts that to examine the bill

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[272] Staff Opening Brief at 6.
[273] Staff Opening Brief at 6-7 (*citing Robert M. Shaw v Mohave Electric Cooperative*, ACC Decision No. 67112 (July 9, 2004). A.A.C. R14-3-101 (which provides the standards to be applied if not otherwise provided)).
[274] Staff Opening Brief at 7.
[275] Staff Opening Brief at 7.
[276] Staff Opening Brief at 7 (*citing* Ex S-1 (Staff Report) at 2).

impact of the New Rates, it is necessary to look separately at the impact of the base rate changes and the adjustor changes.[277]

Staff notes that in APS's analysis of base rate impacts, APS used a statistically valid sample of 951,042 residential customers (the number of customers with a full year of usage data in the 2015 Test Year). Staff also notes that Ms. Champion's witness performed a base rate analysis using a "mini-sample" of 18 bills that Ms. Champion obtained from APS customers and a second sample of 16,237 customers with 194,844 monthly bills. Staff states that Mr. Padgaonkar's mini-sample is not statistically valid because it is not representative of the entire residential class, was not randomly selected, and does not account for seasonality. Staff states that Mr. Padgaonkar's second sample is statistically valid, with a 99 percent confidence level.[278] Staff states that Mr. Padgaonkar's analysis of the Transition Rates showed a base rate impact of 15.68 percent, which Staff found to be "within reasonable sampling error" compared to APS's calculation of the base rate bill impact of 15.90 percent.[279]

Staff states that Mr. Padgaonkar's determination that the bill impact of the 16,237 customers in the sample under the New Rates was 19.37 percent assumed that the customers would move to a "most-like" rate after the Transitional Rates period ended.[280] Staff states that according to APS, as of May 15, 2018, about 23 percent of the existing customers had chosen a new rate schedule, which Staff states means that it is likely a "considerable portion" of the customers Mr. Padgaonkar included in the "most like" rates would not actually be on a most-like schedule.[281] Staff opines that the disparity between Mr. Padgaonkar's results under the New Rates and the APS estimate of 15.90 percent is likely due to Mr. Padgaonkar's "failure to take into account the customers migrating to new rate schedules, and instead just including them in the 'most like' rate schedule category."[282]

Staff notes that Mr. Padgaonkar also analyzed the base rate impact by looking at the impact of customers' actual new rate schedules, using customers with "similar" schedules (customers who stayed

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[277] Staff Opening Brief at 8.
[278] Staff Opening Brief at 9.
[279] Staff Opening Brief at 9.
[280] Staff Opening Brief at 9.
[281] Staff Opening Brief at 9.
[282] Staff Opening Brief at 9; s*ee also* Ex S-1 at 3; Ex C-1 at 48.

in the same non-timed, TOU, or demand rate schedules) and those with "dissimilar" schedules (new rate schedule that is not comparable to customer's previous schedule). Staff states that Mr. Padgaonkar's calculated base rate impact for these two groups--19.14 percent for "similar" and 13.70 percent for "dissimilar"--vary greatly, between themselves, from the APS 15.90 percent, and from Mr. Padgaonkar's 15.68 percent for Transition Rates.[283] Staff believes that the differences between the "similar" and "dissimilar" groups can be explained by the assumption that customers who opted for dissimilar rates are more informed and pay greater attention to their bills since they proactively chose what they believed to be a "most economical" rate. Staff asserts that Mr. Padgaonkar's estimates under the "similar" and "dissimilar" analyses do not account for some customers changing their behavior in response to the New Rates and thus do not conform to the needed assumption for a valid comparison that customers will keep the same behavior as in the Test Year.[284] Staff suggests why some rate plans might appear more expensive than others:

> The New "most like" or "similar" rate plans are not more expensive for customers. The only conclusion that can be reached is that a customer on a "similar" new rate plan is experiencing a higher bill than those in the dissimilar rate plan category, because they do not optimize their behavior to achieve lower billings. Customers choosing a dissimilar rate schedule are likely more informed since they proactively chose what they believed to be the most economical rate schedule for their particular situation. These customers will try to change their behavior to achieve maximum benefits from their new rate plan. Those choosing a time-of-use rate over a non-time-of-use rate typically shift as many kWh as possible to off-peak hours. This behavior optimization can explain why the base rate bill impact of the "dissimilar" group is much lower than the "similar" or "most-like" group.[285]

Staff concluded that Mr. Padgaonkar's 15.68-percent impact under the Transition Rates is more representative of the base rate bill impact than that produced under his "more differentiated approach." Staff also confirmed APS's 15.9-percent base rate bill impact before the adjustor sweep is factored in.[286]

Staff notes that the adjustor transfer constitutes the most significant difference between APS's and Ms. Champion's overall bill impact analyses, as Mr. Padgaonkar calculates the adjustor transfer to

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[283] Staff Opening Brief at 10.
[284] Staff Opening Brief at 10; *see also* Staff Reply Brief at 6.
[285] Staff Reply Brief at 6-7.
[286] Staff Opening Brief at 11; Staff Reply Brief at 7.

be 4.74 to 4.87 percent, and APS calculates the adjustor transfer to be 11.36 percent. Staff calculates the adjustor transfer to be 11.2 percent.[287]

Staff points to Section VIII of the Settlement Agreement, which provides for the transfer of items from the adjustor mechanism to base rates. Section 8.1 of the Settlement Agreement states that the adjustor rates will be zeroed out or reduced, consistent with their Plans of Administration ("POA"). This has been referred to as the "adjustor sweep," and Staff states that it is something that occurs in most rate cases depending on the respective POA. Staff notes that there are seven adjustors, each with its own POA, that must be considered: (1) the DSMAC; (2) the EIS; (3) the FCRR; (4) the LFCR mechanism; (5) the SBC; (6) the REAC, and (7) the TCA. Mr. Liu testified that "[d]ue to the nature of an adjustor mechanism, its rate varies from year to year with or without a rate case, which can be caused by the change of the budget, under- or over-collection from the prior year, and change of the billing determinants."[288]

Staff found that APS's adjustor transfer impact analysis conformed to all four of the assumptions Staff believes are critical to a proper bill impact analysis.[289] Staff concluded that APS's analysis, which found an 11.36 percent impact due to the adjustor sweep, closely resembled the 11.20 percent impact calculated by Staff. Mr. Liu believes the 0.16 percent difference between APS and Staff may be attributable to a change in billing determinants from the Test Year.[290]

Staff states that Mr. Padgaonkar's calculated adjustor impact of 4.74 to 4.87 percent fails to capture some of the assumptions necessary for a meaningful analysis (*i.e.*, Staff's assumptions (3) and (4)) because Mr. Padgaonkar's analyses did not account for the timing of the adjustor transfers or any change in billing determinants and underestimates the effect of the adjustor sweep by including impacts beyond the rate case decision.[291] Staff agrees with APS's assessment that Mr. Padgaonkar's calculation overestimates the net bill impact because Mr. Padgaonkar's analyses "underestimates the bill

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[287] Staff Opening Brief at 11.
[288] Staff Opening Brief at 1 (*citing* Ex C-1 (Staff Report) at 5).
[289] Staff Opening Brief at 12; Ex S-1 at 4.
[290] Staff Opening Brief at 12.
[291] Staff Opening Brief at 12-13; Staff Reply Brief at 7. According to Staff under Mr. Padgaonkar's analysis, the adjustor transfer does not take place at the same time as the New Rates become effective (violating Assumption No. 3), and the cost and billing determinants used to establish each adjustor rate do not remain the same as in the Test Year (violating Assumption No. 4).

reductions from adjustor rates,...erroneously relying solely on price trends and observed rate schedules."[292]

According to Staff, adjustor mechanisms are used in ratemaking specifically because the Cost of Service Study ("COSS") and/or the units over which recovery is to be calculated are expected to vary over time.[293] Staff notes that the REAC and DSMAC adjustors were reset according to their POAs by the Commission on the same date as the rate case and adjustor sweep. Staff explains:

> The REAC adjustor included a higher budget, a true-up for under-recovery during the first eight months of 2017, as well as the adjustor transfer resulting from the rate case Settlement Agreement. As a result, the REAC adjustor was eventually set at a higher rate instead of a reduction. In addition, as Witness Liu pointed out, most of the adjustor rates are on a per-unit basis or per kWh, which are calculated by dividing the revenue requirement by the billing determinants or total kWh sales of the prior year. The billing determinants change from year-to-year and are not fixed at the Test Year level. Even with the same amount of adjustor transfer, higher total kWh sales would yield a lower adjustor transfer impact per kWh. Finally, the transfer of the Lost Fixed Cost Recovery ("LFCR") adjustor was not recognized on August 29, 2017, since the timing of any rate change is specifically outlined in its POA.[294]

Staff states that because of the complex nature of the adjustor transfer, a "backward" calculation must be performed to verify adjustor transfer bill impact, which is what APS did in this case. According to Staff, the backward calculation isolates the other impacts occurring after the rates, such as the ones included in Mr. Padgaonkar's analysis.[295] After reviewing APS's and Mr. Padgaonkar's analyses, Staff concluded that the adjustor impact was 11.20 percent, thereby confirming the reasonableness of APS's projections.[296]

Staff believes that the 4.54 percent average residential bill impact referenced in the Settlement Agreement and Decision No. 76295 is accurate and notes that the term "average" means many will fall above and below that percentage.[297] Staff agrees with APS that numerous factors can affect whether a given customer will experience the average rate increase: the differences between Test Year and year-of-billing analysis, changes in weather, variability in load shapes between customers, seasonal rate

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[292] Staff Opening Brief at 13 (*citing* Ex APS-3 at 2).
[293] Staff Reply Brief at 8.
[294] Staff Reply Brief at 8.
[295] Staff Reply Brief at 8. Staff explains that a backward calculation uses the revised actual adjustor rates on or after August 19, 2017, and recalculates the adjustor rates backward, excluding the adjustor transfer from the revenue requirement.
[296] Staff Reply Brief at 9.
[297] Staff Opening Brief at 14.

changes, changes in duration of billing cycle, annual changes to adjustors, and customers switching rates.[298] Staff states further:

> This is not to say that the average bill impact of 4.54 percent or close to it is not representative of the impacts to be experienced by many customers. A comparison was done between the transition rates and the rates during the Test Year and it was found that the 951,038 customers had a 3.7 percent to 8.7 percent increase with an average impact of 4.1 percent for residential customers.
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> In a similar analysis of customers using the new rates, it was found that 23 percent of customer [sic] would experience a rate decrease, 17 percent an average increase of 1.23 percent or less, 28 percent would see an average increase of 6.3 percent and 21 percent would see an average increase of 10.8 percent. The remaining 11 percent would see an increase greater than 10.8 percent. The average base rate increase across the customers is 4.1 percent.[299]

**3. Has the Complainant supported a claim that APS is overearning?**

Staff argues that Ms. Champion has not submitted proof by a preponderance of the evidence that APS is likely overearning. Staff states that Mr. Padgaonkar's analysis of APS's earnings ignores several important facts. First, Staff points to Ms. Hobbick's testimony that shows that the "actual distribution of residential customers on each on the new rate plans as of May 2, 2018, is nearly identical to the distribution assumed when allocating the revenue to be recovered from each plan."[300] Second, Staff asserts, "because APS had to rely on projections at the time of the rate case, and projections are never entirely accurate, when the actual customer selections are made and their rates go into effect, APS will receive more revenue from some customers and less from others; making claims of over-earning speculative at best."[301] Third, according to Staff, Mr. Padgaonkar appears to have misinterpreted Ms. Hobbick's chart regarding the breakdown of customers falling above the average (JEH-1DR) as showing that 60 percent of customers were projected to have a 6.3 percent or greater bill impact. According to Staff, because each "bin" in the chart contains a 5 percent range, the chart should be interpreted as demonstrating that 50 percent of customers would have an increase greater than 4.5 percent.[302] Fourth, Staff asserts:

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[298] Staff Opening Brief at 14
[299] Ex APS-4 at 4-5.
[300] Staff Opening Brief at 15 (*citing* Ex APS-5 at 2).
[301] Staff Opening Brief at 15.
[302] Staff Opening Brief at 15 (*citing* Tr. at 741-742).

> The limited data that Padgaonkar obtained and analyzed from APS to project the actual impact of the new rate plans likely resulted in an "applies to oranges" comparison with little useful purpose. [Ms. Hobbick] testified that the bill impact would not be the same using less than an annual sample because of the weather and changing customer usage patterns, different customer behaviors and other factors.[303]

**4. Have Complainants shown that APS's rates and changes are "unjust and unreasonable?"**

In response to assertions that the rates approved in Decision No. 76295 are not just and reasonable because the bill impact was greater than the 4.54-percent projection, Staff explains that bill impacts are among the factors that the Commission considers in setting rates, but that the Commission cannot set rates based on a single isolated factor. Staff states, "bill impacts themselves are not determinative of whether rates or charges are just and reasonable; instead the Commission must balance the interests of the utility and its customers in determining just and reasonable rates and charges."[304] Staff asserts that the Commission may utilize various ratemaking principles to achieve policy goals and address various concerns, such as invoking gradualism to mitigate rate shock or instituting rate designs to encourage conservation. Staff argues that the evidence shows that the Commission properly considered the interests of APS and its customers

Staff asserts that Ms. Champion improperly relies on "the limited actual data available to call into question the accuracy of the projected 4.54-percent average bill increase analysis." Staff states:

> [T]he Complainant appears to lose sight of the fact that the residential bill impact was an average which quite simply means that not all customers will experience that exact percentage increase. To rely upon the average residential bill impact alone as the dispositive factor in determining the "justness and reasonableness" of the rates in this case flies in the face of the lengthy and complex process that is undertaken in these cases, especially since the average impact data is presented for informational purposes and such data was generated after the rates had already been determined by the Commission in this case to be fair, just and reasonable.[305]

Staff asserts that even if APS is realizing more revenue than projected, Ms. Champion has failed to demonstrate that it means APS is earning more than its authorized rate of return.[306] Staff explains:

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[303] Staff Opening Brief at 15-16.
[304] Staff Reply Brief at 2 (*citing Phelps Dodge Corp. v. Ariz. Elec. Power Co-op, Inc.*, 209 Ariz 95, 106-07 (App. 2004) ("Our courts have consistently held that just and reasonable rates are those that are fair to both consumers and public service corporations.")).
[305] Staff Reply Brief at 4.
[306] Staff Reply Brief at 9.

> Fundamentally, ratemaking provides for a total revenue requirement sufficient to meet a utility's operating costs and afford a reasonable rate of return on a utility's investment. Notable, authorized revenue is not guaranteed, and numerous variables, including consumer demand, growth, weather, management decisions, and other factors contribute to actual revenue produced. In fact, Complainant concedes this by her assertion that "customer' [sic] selection of New rate plans would have an effect on APS's earnings."[43] However, increased revenues associated with new rate plans or growth or other factors, may also result in expense levels variances which can result in downward pressure on earnings.[307]

43. *Consolidated Water Utils. Ltd. Ariz. Corp. Comm'n*, 178 Ariz.478, 484 (App. 1993)

Staff asserts that the record in this proceeding contains no evidence that APS is exceeding its authorized rate of return.[308] Furthermore, Staff states, any evidence presented in support of a claim of over-earning relies on a snapshot of a few months of APS's gross revenues that does not depict APS's net revenues or rate of return, as the costs of providing services were not accounted for. Staff notes that several factors, including weather and customer behavior, affect the bills that customers receive in any given month, and argues that an analysis performed using only four months of data cannot accurately depict the annual impacts of a rate increase.[309]

In addition, Staff argues that allegations that customers' bills do not reflect an exact 4.54 percent average increase, or that their increase exceeded that number, alone do not demonstrate over-earning by APS; rather that argument reflects a misunderstanding of averages or fails to account for variable factors and factors outside the authorized revenue requirement, including adjustors and consumer demand.[310]

Finally, Staff argues that Ms. Champion's reliance on the revenues referenced in Pinnacle West's SEC quarterly reports for Q3 2017 through Q2 2018 is misplaced because the numbers are consistent with the numbers in the Settlement Agreement and because increased revenues, without more facts concerning expense level changes, do not mean that the company is exceeding its authorized rate of return.[311]

[307] Staff Reply Brief at 9 (*citing* Champion Opening Brief at 9; Gayer Opening Brief at 1).
[308] Staff Reply Brief at 9.
[309] Staff Reply Brief at 10.
[310] Staff Reply Brief at 10.
[311] Staff Reply Brief at 11. In Champion's Opening Brief at 9, she argues that "APS's parent [Pinnacle West], has reported $129 million in revenue attributable to the rate increase for Q3 2017 (partial) through Q2 2018" and that while the "rate

**5. Staff's Response to Mr. Gayer and Mr. Woodward.**

Staff states that although Mr. Gayer states that he generally agrees with Mr. Padgaonkar, Mr. Gayer's position (that the average rate increase for residential customers was closer to 15.5 percent and that the adjustors were swept without corresponding adjustor rate reductions) is contrary to that of every other party in the case, including Ms. Champion's witness, who agrees that some reduction of adjustor rates occurred.[312] Staff notes that Mr. Gayer contends that APS customers are entitled to reparations of excessive charges for at least the Transition Rates, plus interest pursuant to A.R.S. § 40-248(a).[313] Staff asserts that such an award would be retroactive ratemaking, which is prohibited under Arizona law.[314] Staff argues that "[i]t is a fundamental rule that utility rates are exclusively prospective in nature."[315] Staff asserts that "[t]o 'correct' a pre-existing rate based on erroneous post-Test Year results, the Commission would have to order a change to a previously approved rate, then apply that change to a past period. That is the definition of retroactive ratemaking."[316] Staff acknowledges that there are limited exceptions to the prohibition against retroactive ratemaking such as when there is a notice that the rates in effect are subject to refund, when there is notice to the utility in advance that an approved action may be disallowed in the future, or in the case of a judicial reversal of a Commission Decision or the disgorgement of illegal gains, but states that none of those conditions are present in the case.

To the extent Mr. Gayer pursues relief under his First Amended Complaint (which included discrimination and consumer fraud charges), Staff agrees with APS that under the Arizona Rules of Civil Procedure, Mr. Gayer should not be allowed to amend the Champion Complaint.[317] Further, Staff notes that Mr. Gayer was a party to the 2016 Rate Case and that if he was aggrieved by that Decision,

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increase has been touted in the press as bringing in an additional $95 million for APS, APS has made it clear that the additional revenue associated with the rate increase is really $148 million."

[312] Staff Opening Brief at 16 (*citing* Tr at 470-71, 476-477).

[313] Tr. at 476-77.

[314] Staff Opening Brief at 17; Ex Gayer-1 at 9

[315] *Citizens Util. Co. v. Superior Court in and For Maricopa County*, 107 Ariz. 24, 480 P.2d 988 (1971).

[316] Staff Opening Brief at 17-18; *see San Diego Gas & Elec. Co. v. Sellers of Energy*, 127 F.E.R.C., 898 F.2d 809, 810 (D.C. Cir. 1990).

[317] Staff Opening Brief at 19-21. In a March 18, 2018, Procedural Order it was ordered that Counts Two and Three in the Gayer Amended Complaint would be kept separate from the Champion Complaint pending the outcome of the Champion Complaint; the Gayer Amended Complaint was stayed until further order.

his remedy was to file a petition for rehearing and to appeal.[318]

In response to Mr. Woodward's criticism of the results of the rate case rather than the process,[319] and his criticism of the depiction of the rate impact, Staff asserts that "[i]n the absence of evidence of flaws in the ratemaking process resulting in the 4.54 percent average base rate increase, Mr. Woodward's assertion that one aspect of the results alone—that some customers pay higher bills—does not equate to unjust and unreasonable rates."[320]

**6. What are appropriate remedies under A.R.S. § 40-246?**

Staff states that the Commission has met its obligation under A.R.S. § 40-246 by giving the complainants a hearing to present evidence to determine if a full-scale rate hearing is required. Staff does not believe that complainants have made a prima facie showing of unjust and unreasonable rates. Thus, Staff argues, the Commission should deny Ms. Champion's and Intervenors' requests to order reparations and/or monetary penalties; to rescind, alter, or amend the rates and charges adopted in Decision No. 76295; and/or to order a new rate case.[321]

Staff asserts that the Commission cannot order APS to pay reparations to customers pursuant to A.R.S. § 40-248 because (1) neither Ms. Champion nor the Intervenors assert that APS has imposed rates or charges in excess of those authorized by the Commission, nor is there any evidence this has occurred; (2) Ms. Champion did not include this claim for relief in her Complaint and may not amend the Complaint through her closing brief;.[322] and (3) neither monetary reparations nor monetary penalties are available under Arizona law. [323]

In addition, Staff argues that the evidence in this record does not support a finding that reopening Decision No. 76295 pursuant to A.R.S. § 40-252 is in the public interest.[324] Further, Staff argues that the evidence does not support requiring a new rate case to examine complainants' allegations, as the hearing in this matter has already examined the allegations, and complainants did

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[318] Staff Opening Brief at 21.
[319] Ex Woodward-3 (Woodward Reb) at 1-2.
[320] Staff Opening Brief at 19.
[321] Staff Reply Brief at 12.
[322] Staff Reply Brief at 14.
[323] Staff Reply Brief at 14 (*citing* A.R.S. § 40-248(A) and (C); A.R.S. § 40-424; *El Paso & S.W. R. Co. v. Ariz. Corp. Comm'n*, 51 F.2d 573, 576 (D. Ariz. 1931) (noting that reparation may be made for the collection of rates and charges in excess of those fixed and prescribed by the Commission)).
[324] Staff Reply Brief at 14.

not meet their burden by a preponderance of the evidence that the rates being charged by APS are unjust and unreasonable.[325] Staff states that the evidence shows affirmatively that the established rates serve the public interest and are just and reasonable and in the interests of both APS and its customers.[326]

Staff states that "[w]hile there are on-going issues with customer education and outreach, the rates that are in effect today have been approved by this Commission and appropriately implemented for customers."[327] Staff acknowledges, however, that if the Commission determines that complainants have met their burden of proof, the Commission could reopen the 2016 Rate Case Decision pursuant to A.R.S. § 40-252, as there is nothing under A.R.S. § 40-246 that restricts the remedies available to the Commission.[328]

**7. Recommendation for Future Rate Cases.**

In response to the ALJ's request for parties to consider additional remedies or recommendations for future rates, Staff suggests the following actions to address, prospectively, confusion over bill impacts and effective customer education:

- **More Customer Education**. Staff noted that according to APS, approximately half of its residential customers are not on their most economical rate plan. Therefore, Staff recommends that additional customer education or engagement be "encouraged" to assist those customers to choose their most economical rate. Staff recommends that, APS be required within 90 days from the date of the Decision in this matter, to provide notice to all customers inviting them to have a one-on-one meeting with an APS representative to go over the new rate plans. Staff opines that APS shareholders should bear the costs of such education program.[329]

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[325] Staff Reply Brief at 15.
[326] Staff Reply Brief at 14.
[327] Staff Opening Brief at 21.
[328] Staff Opening Brief at 22; *see also* Staff Reply Brief at 12-13. Staff acknowledges that the Commission has broad authority to adjudicate a complaint lodged against a public service corporation stemming from the Arizona Constitution and implementing statutes and, because ratemaking is within the Commission's exclusive jurisdiction, that the Commission is uniquely qualified to hear and resolve grievances alleging unreasonable rates or charges. *See* Ariz. Const. art. 15, § 3; A.R.S. § 40-246; *Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 291 (1992); *Tucson Gas, Elec. & Power Co.*, 15 Ariz. 294, 305-07 (1914).
[329] Staff notes that in response to an October 3, 2018, letter from Commissioner Dunn, APS filed extensive data detailing its efforts to educate its residential customers, through its Customer Outreach and Education Plan which included Staff and stakeholder review and input. No party has alleged that APS failed to comply with the customer outreach and education obligations imposed under the Settlement Agreement, including the expenditure of $5 million. However, Staff asserts, the

- **Stakeholder Group**. Staff appears to support Mr. Snook's suggestion that APS form a stakeholder group for input on how best to provide customers with notice of future rate increases, provide better explanations regarding average percentage increases, and focus on education to promote and assist customer understanding of new rate design plans and how best to control usage for lowering bills.[330]
- **Outreach**. Staff recommends that APS be required to direct outreach to customers not on their most economical plan, and to document why some customers might reject the most economical plan for use as guidance in future rate cases.[331]
- **Adjustor Itemization**. Staff recommends that APS be required to "[provide] clarification of adjustors and the effects on customer bills, possibly including line item descriptions."[332]
- **Charts illustrating new rates**. Staff recommends that APS be required to consider implementing charts to explain to customers how the base rate average impacts their bills over a full year, to aid in removing the perception that each of their monthly bills will be increased by the stated base rate percentage.[333]
- **Look to other utilities**. Staff suggests that APS be required to consider implementing successful methods used by other utilities to educate customers, such as offering risk-free guarantees to customers trying new rate plans.[334]

## III. Resolution.

### A. Burden of Proof; Standard of Proof; Remedies.

Complainants brought this matter to the Commission pursuant to A.R.S. § 40-246, which is silent on the burden and standard of proof to be applied. There is no dispute in this case that the complainants bear the burden of proof. The standard of proof utilized by the Commission in complaint

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testimonies by the Complainant and Intervenors and public comments received in this docket make it evident to Staff that customers do not fully understand the New Rates and choices.

[330] Staff Opening Brief at 23; Tr. at 833-35.

[331] Staff Opening Brief at 23.

[332] Staff Opening Brief at 23.

[333] Staff Opening Brief at 23.

[334] Staff Opening Brief at 23.

proceedings has been the preponderance of the evidence.[335] APS argues for a higher standard because of the deference that should be afforded to rates that the Commission has found to be just and reasonable.

The statutes cited by APS (A.R.S. §§ 40-254 and 40-254.01) that subject review of a Commission Order to a clear and convincing standard are not applicable here. These statutes address the appeal of a Commission Order to the Superior Court or Court of Appeals and specifically reference the standard of "clear and satisfactory evidence" or a "clear and satisfactory showing" that the Order is unlawful or unreasonable.[336] A.R.S. § 40-246, which allows for challenges to the justness or reasonableness of rates, makes no reference to a clear-and-convincing-evidence standard. If the Legislature intended to require a clear-and-convincing-evidence standard for complaints brought under A.R.S. § 40-246, it would have stated as much. We do not find that a standard of proof higher than the preponderance-of-the-evidence is warranted in this complaint proceeding.[337]

Decision No. 76295 is a final Decision of the Commission, which is deemed conclusive, and the rates and charges approved therein are deemed constitutional.[338] While there is a strong public interest in the finality of Commission Orders, the issue of whether approved rates and charges are just and reasonable is also a matter of substantial and constitutional concern.

Complainants in this action have requested, *inter alia*, rescission of Decision No. 76295 as well as reparations. The Commission can rescind a prior Decision subject to the requirements of A.R.S. § 40-252 (*i.e.*, after providing notice to the affected corporation and an opportunity to be heard), when such action is in the public interest.[339] Thus, if there were a showing that APS's current rates and charges are not just and reasonable, the Commission would have the authority to rescind Decision No. 76295 subject to the due process protections of A.R.S. § 40-252. Reparations, however, are appropriate only when a public service corporation is found to be charging rates in excess of those authorized by

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[335] *See* Decision No. 67112 (Shaw v. Mohave Elec. Co-op) at 3; Decision No. 75042 (Carefree 34 v. Liberty Utilities Corp.) at 12; Decision No. 64949 (Ariz. Corp. Comm'n v. Qwest) at 54; Decision No. 72594 (*Spartan Homes v. Far West Water and Sewer*) at 46.

[336] *See* A.R.S. §§ 40-254 and 40-254.01.

[337] We note that the result of this hearing will not be to modify AS's rates but to determine if there is sufficient evidence that would warrant further Commission action.

[338] A.R.S. §§ 40-252, -253, -254, -254.01; *see also RUCO v. Ariz. Corp. Comm'n*, 240 Ariz. 108, 109 (2016); *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, at 154 (1956).

[339] *See Ariz. Corp. Comm'n v. Arizona Water Co.*, 111 Ariz. 74, 76 (1974).

the Commission.[340] In cases where a public service corporation is charging its authorized rates and is found to be over-earning, the appropriate remedy is to re-open the rate case decision pursuant to A.R.S. § 40-252 to adjust rates proactively after a hearing, if the evidence supports an adjustment, or to order the company to file a new rate case. The Commission cannot adjust current rates to recover previous over- or under-earning, as to do so is impermissible retroactive ratemaking.[341]

The current proceeding was not brought or noticed pursuant to A.R.S. § 40-252. Thus, if it is found in this proceeding that it would be in the public interest to rescind or modify a portion of Decision No. 76295, a separate subsequent proceeding, with notice to all parties to the 2016 Rate Case docket, would be necessary. Furthermore, unless it is found that APS is charging rates other than those authorized in Decision No. 76295, the Commission may only adjust rates prospectively.

To the extent that Mr. Gayer and Mr. Woodward's claims in this proceeding are that the rates approved in Decision No. 76295 are too high, such arguments are barred by A.R.S. §§ 40-252, 40-253, 40-254, and 40-254.01, as well as under the doctrine of *res judicata*.[342] Both Mr. Gayer and Mr. Woodward were parties to the 2016 Rate Case, where they could, and should, have made these arguments. However, to the extent they argue that the rates approved in Decision No. 76295 are not just and reasonable because they were not authorized by the Commission, or produce earnings in excess of the authorized rate of return, or are unfair (for reasons not already considered when the rates were approved), such claims are appropriately brought through this complaint.

**B. Have Complainants met their burden under A.R.S. § 40-246 to show that APS has violated a Commission order or rule or that APS's rates approved in Decision No. 76295 are not just and reasonable?**

A.R.S. § 40-246 provides:

> A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting

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[340] *See El Paso & S.W.R. Co. v. Ariz. Corp. Comm'n*, 51 F.2d 573 (D. Ariz. 1931); A.R.S. § 40-248. A.R.S. § 40-248 which provides in pertinent part: "When complaint is made to the commission concerning any rate…made by any public service corporation, and the commission finds, after investigation, that the corporation has made an excessive or discriminatory charge, the commission may order that the corporation make reparation to the complainant with interest …."

[341] *See Associated Gas Distributors v. FERC*, 898 F.2d 809 (D.C. Cir. 1990).

[342] *See General Cable Corp. v. Ariz. Corp. Comm'n*, 27 Ariz. App. 386 (App. Div 1 1976) (complaint that alleged contract rates with utility were unjust and unreasonable was collateral attack on a rate adjustment proceeding and barred under A.R.S. § 40-252).

forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation unless it is signed by the mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.

B. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission, or on review by the courts. The commission need not dismiss a complaint because of the absence of direct damages to the complainant.

C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall serve notice thereof, with a copy of the complaint, upon the party complained of not less than ten days before the time set for the hearing, unless the commission finds that public necessity requires that the hearing be held at an earlier date.

Neither the Champion Complaint nor the Intervenor's arguments allege that APS implemented rates and charges other than those approved in Decision No. 76295, nor was any evidence presented that APS is not abiding by the directives of Decision No. 76295. Further, there is no evidence that APS is charging rates other than those approved by the Commission. Thus, we find that there is no evidence that APS has violated the law or a Commission Order or rule in implementing the Settlement Agreement.

The Champion Complaint, which is supported by at least 25 APS consumers in the form of the Change.org petition, is premised on the reasonableness of the rates approved in Decision No. 76295. The Champion Complaint alleges that if the bill impact assumptions in the Settlement Agreement are too low, APS may receive a windfall, in which case the rates cannot be said to be just and reasonable. Ms. Champion argues that based on actual rates being charged in 2018, the base rate impact of the 2016 Rate Case was 17.89 percent, not 15.9 percent as claimed; that the 15.9 percent base rate increase was premised on an inaccurate forecast of customer rate plan selections; that the New Rates result in more revenue than authorized by the Decision; and that ratepayers never saw the full impact of the 11.36 percent adjustor sweep because the adjustors moved independently of the rate case or did not reset until

many months later. Mr. Gayer adds the argument that the impact of the adjustors, whether approved inside or outside of the 2016 Rate Case and Decision No. 76295, causes APS's rates to be unjust and unreasonable.[343] Mr. Woodward focuses on the equity and fairness of the New Rates, particularly for smaller energy users.[344]

The Commission has plenary authority to prescribe rates but is limited by the Arizona constitutional mandate that the rates be just and reasonable.[345] The Commission may consider various ratemaking principles to achieve public policy goals and address various concerns, such as gradualism and encouraging conservation as long as the rates are not arbitrary and capricious.[346] Just and reasonable rates meet the overall operating costs of a utility and produce a reasonable rate of return. Rates are not just and reasonable if they do not produce a reasonable rate of return or if they produce revenue that exceeds a reasonable rate of return.[347] Just and reasonable rates are fair to both consumers and public service corporations.[348] In *Arizona Cmty. Action Ass'n v. Arizona Corp. Comm'n*, 123 Ariz. 228, 231 (1997), the Arizona Supreme Court explained the interests to be considered in setting rates:

> In determining what is a reasonable price to be charged for services by a public service corporation, an examination must be made not only from the point of view of the corporation, but from that of the one served, also. A reasonable rate is not one ascertained solely from considering the bearing of the facts upon the profits of the corporation. The effect of the rate upon persons to whom services are rendered is as deep a concern in the fixing thereof as is the effect upon the stockholders or bondholders. A reasonable rate is one which is as fair as possible to all whose interests are involved.

To prevail in this complaint, premised on the justness and reasonableness of APS's rates authorized in Decision No. 76295, complainants must show that it is more likely than not that APS's current rates and charges result in APS earning more than its authorized rate of return or that APS's current rates and charges are otherwise unfair.

Dr. Faruqui testified about the ratemaking process and how rate impact projections are

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[343] Gayer Reply Brief at 1 "The Complaint herein seeks evaluation of the actual application by APS of ***all*** current residential rates (except solar) for being Just and Reasonable, including rates from Decision 76295 and all other Dockets that impact the current rates, via Adjustors or otherwise, since the last rate case before 76295."

[344] Woodward Opening Brief at 6.

[345] *See e.g., Freeport*, 419 P.3d at 944.

[346] *See Miller, 227 Ariz. at 28* (Commission may take a broad view in setting rates); *Freeport,*419 P.3d at 947 *(*Commission may consider rate shock and gradualism in setting rates).

[347] *See Scates,* 118 Ariz. at 534*; see also Freeport*, 419 P.2d at 944.

[348] *Phelps Dodge*, 287 Ariz. at 584.

determined. In the rate case process, once revenues are allocated to the various customer classes based on the COSS, rates are designed to collect the allocated revenue based on the Test Year (in this case 2015) billing determinants (*i.e.*, the number of customers and their usage patterns). Dr. Faruqui testified that APS's ratemaking process was consistent with industry practice, that APS's rates were designed to collect the approved $94.624 million in revenue, and that the 4.54 percent rate increase was the result of an appropriate and reasonable approach to ratemaking. Complainants did not refute Dr. Faruqui's testimony or challenge the overall revenue requirement, COSS, or allocation of the total revenue requirement to the Residential Class.

Some of the enunciated benefits of the Settlement Agreement were updated rate designs with rate options.[349] Except for the Basic Service Charge, the 90-day Trial Period, and the new TOU on-peak hours, the parties to the 2016 Rate Case who did not sign the Settlement Agreement did not oppose the new residential rates.[350] In approving the Settlement Agreement and New Rates, the Commission found that the proposed Basic Service Charges struck the appropriate balance between the interests of the Company (having more fixed costs collected in a fixed charge) and ratepayers (maintenance of substantial volumetric charges that permit ratepayers to reduce bills through energy efficiency).[351] In addition, the Commission found that the Settlement Agreement provided customers with more off-peak hours than previously allowed (*i.e.*, on-peak hours were changed from noon to 7 p.m. to 3 to 8 p.m.) and permitted customers who cannot shift load to take service under the R-Basic rate that has no time-differentiated or demand charge elements.[352] The Commission found that the 90-day Trial Period, intended to encourage implementation of the updated rate designs by allowing ratepayers an opportunity to try a rate first, was in the public interest.[353] At the same time, the Commission emphasized the importance of the outreach and education program to the success of the new rate designs.[354]

It is apparent that in the 2016 Rate Case, the parties to the Settlement Agreement and the

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[349] *See* Decision No. 76295 at Attachment A at 7.
[350] Decision No. 76295 at 35-59.
[351] Decision No. 76295 at 46.
[352] Decision No. 76295 at 60.
[353] Decision No. 76295 at 53.
[354] Decision No. 76295 at 53-55.

Commission were trying to design rates that would send better price signals to customers to improve efficiency, reduce subsidies, and provide customers with options and tools to save money. The residential rate design approved with the Settlement Agreement included significant changes. The New Rate plans included increased Basic Service Charges and demand charges to address cost shifts associated with collecting fixed costs in volumetric rates and adjusted TOU rates to encourage customers to shift loads to times of lower demand. The New Rates for the residential class consisted of three basic two-part non-time differentiated rates (i.e., a Basic Service Charge and commodity charge),[355] a two-part TOU energy rate (TOU-E), and three different three-part (demand) rates.[356] The TOU-E, R-2, R-3, and R-Tech have time-differentiated energy rates with an on-peak period of 3 p.m. to 8 p.m. year-round, excluding weekends and holidays, which was a change from the previous on-peak period of noon to 7 p.m. Residential customers were to choose a New Rate Plan, and if they did not choose a New Rate Plan, were migrated to the New Rate plan that most resembled their current rate plan.

Ms. Hobbick testified about APS's projection of the bill impacts from the New Rates. For this proceeding, Ms. Hobbick prepared a table of the expected impacts of the New Rates based on the number of residential customers in the Test Year with 12 months of usage history and assuming no change in behavior to adjust to the New Rates or modified TOU hours.[357] APS's estimate showed that under the New Rates, 23 percent of residential customers would experience a rate decrease, 28 percent would experience an average increase of 6.3 percent, 21 percent would see an average increase of 10.8 percent, and the remaining 11 percent would experience an increase greater than 10.8 percent. The average increase across the residential class was calculated to be 4.1 percent.

In the past, estimating bill impacts was a straightforward calculation, as residential consumers were assumed to remain on their current rate plans, and new customers were assumed to behave like existing customers. With the New Rate plan options, APS had to forecast whether ratepayers would stay on the most-like plan or opt for a dissimilar plan that would be their most economical. The

[355] These are R-XS for customers with usage less than 600 kWh/s per month, R-Basic and R-Basic Large for customers who use more than 1,000 kWh per month.

[356] These are R-2 and R-3, which are available to all customers, and R-Tech, which is an optional pilot program. *See* Settlement Agreement at 18.

[357] Ex APS-4 at Attachment JEH-1DR; Tr. at 667, 688.

following table compares the forecasted distribution of ratepayers among the rate plan options with the May 1, 2018, actual distribution:[358]

| | Saver Choice Plus R-2 | Saver Choice Max R-3 | Premier Choice R-Basic | Premier Choice Large R-Basic L | Saver Choice Tech R-Tech | Saver Choice TOU-E | Lite Choice R-XS | Total |
|---|---|---|---|---|---|---|---|---|
| Actual Distribution | 47,248 | 150,383 | 150,683 | 58,766 | 10 | 360,980 | 254,351 | 1,022,421 |
| Forecasted Distribution | 115,116 | 148,045 | 139,107 | 23,417 | 968 | 330,135 | 257,346 | 1,014,134 |
| Actual % | 5% | 15% | 15% | 6% | 0% | 35% | 25% | 100% |
| Forecast % | 11% | 15% | 14% | 2% | 0% | 33% | 25% | 100% |

Based on Mr. Padgaonkar's analysis of rates being paid by APS's residential ratepayers in May 2018, Ms. Champion argues that the approved rates resulted in a bill impact much higher than reported in the Settlement Agreement. A great amount of time and energy was spent in this proceeding calculating and explaining the 4.54 percent bill impact that is referenced in the Settlement Agreement and Decision No. 76295. The results of the analyses performed for this matter do not show that the 4.54 percent estimated average residential impact was wrong. We find, based on the totality of evidence, that the 4.54 percent figure was calculated correctly under industry standards and the Commission's practice and historic procedures. The Complainants criticize APS's failure to include in the estimated average residential impact the impacts associated with adjustors that occurred outside the rate case, or that did not occur for several months. But the Complainants have not shown that the calculation of the bill impacts at the time of the Decision was incorrect. Evidence was presented in the 2016 Rate Case showing the expected impacts of the revenue increase on the different rate plans.[359] That evidence supported APS's 4.54 percent estimated impact. We do not find that APS acted improperly in presenting the 4.54 percent figure. There is no evidence that the Settling Parties or the Commission were misled or did not understand or intend the projected rate impacts when considering and approving the Settlement Agreement.

Even though we find that the 4.54 percent base rate increase was calculated according to

[358] Ex APS-16.
[359] *See* Ex APS-17, Ex APS-18.

industry standards and Commission practice, we agree with the complainants that the 4.54 percent figure represented as the average rate increase in this case was not a meaningful number to most people (who do not participate in rate cases for a living) and may have been misleading. The 4.54 percent figure represents the amount of increase in the base rate portion of the class average residential customer's bill based on Test Year data and exclusive of the adjustor sweep. It does not reflect the specific bill impact that would be experienced by any individual customer in the Test Year or an average customer or individual customer in future years. The 4.54 percent figure does not convey that there will be different seasonal impacts. The 4.54 percent figure does not include revenues collected from adjustors as they reset outside of the rate case. We agree with those parties who recognize that in complex rate cases such as this, preparing a table or graph to demonstrate the range of expected bill impacts will aid substantially in evaluating and communicating the expected bill impacts. We also believe that giving the percentage increases context, as dollar impacts, will be beneficial.

Looking at the forecasted versus actual distribution of ratepayers on the residential plans, Ms. Champion argues that if fewer customers have opted for their most economical rate than was forecast, APS may be receiving more revenues from the residential class than was anticipated in Decision No. 76295. Ms. Champion tries to bolster her point with SEC filings that she asserts show that APS may be collecting more revenue that authorized in Decision No. 76295. However, in approving a "revenue requirement," the Commission did not limit APS's revenues. The revenue requirement is determined by applying the authorized rate of return to APS's fair value rate base. To determine whether APS is over-earning, the Commission must examine the company's operating income. There is not sufficient evidence in this proceeding to make a determination that it is more likely than not that APS is over-earning. No evidence was presented in this proceeding concerning APS's operating expenses or rate base, and without such evidence, it is not possible to find that APS is exceeding its authorized rate of return. At a minimum, the type of information considered in a rate review (*i.e.*, the rate base, operating revenue and expenses, and cost of capital schedules required under A.A.C. R14-2-103) is necessary to determine over- or under- earning.

Mr. Woodward argues that the New Rates are not fair because many ratepayers cannot change their behavior to mitigate the rate increase. He uses his own experience on the R-XS rate as an example.

Following the 2016 Rate Case, Mr. Woodward reduced his energy consumption by 10 percent, but only saw a 0.7 percent reduction in his bill. Mr. Woodward's experience shows that changing behavior can affect a ratepayer's bill, for if he had not reduced consumption, it is likely that his bill would have increased. A ratepayer's inability to completely negate the effects of a rate increase through behavioral changes does not make the rates unreasonable. Furthermore, we do not have evidence in this proceeding about which ratepayers are experiencing the highest bill impacts or how the percentage increases translate to dollar impacts. Rate impacts expressed as percentages can be misleading. For example, the $1.33 increase in the Basic Service Charge for the R-XS rate would have a much larger percentage impact on a customer with a $30 monthly bill than on a customer with a $100 monthly bill, even though the $1.33 increase is probably not sufficiently substantial as to be unreasonable. Moreover, bill impacts and affordability are only two factors among myriad factors such as cost of service, equities among and between rate classes, and policy goals, that the Commission must consider in setting rates. The revenue requirement and revenue allocation to the Residential class is not at issue in this case. In designing rates, the Commission must give the utility a reasonable opportunity to recover its revenue requirement. It is not unfair for ratepayers to shoulder their share of the allocated revenues. To shield one group of ratepayers from a rate increase, without justification supported by evidence, is not fair to other ratepayers.

Mr. Woodward also takes the position that rates that need explaining are unreasonable. This argument assumes that it is possible to create a rate design that would not need to be explained to anyone, which seems unlikely. This argument also assumes that there is no benefit to the rate design changes adopted in the New Rates. The new TOU hours may be easier for ratepayers to manage, and demand charges with lower energy costs may offer some ratepayers additional ways to save by managing their load. For those ratepayers who are unable to shift or manage their loads, the New Rates retained a traditional two-part rate without a time-based rate differential. We do not find that the evidence supports a finding that the New Rates are unreasonable because they increased fixed charges, are different, or require some customer education to be most effective or beneficial.

Mr. Gayer argues that adjustors comprise a significant portion of residential ratepayers' bills and that the adjustor sweep discussed in the Settlement Agreement did not eliminate adjustors from

impacting ratepayers. Adjustor mechanisms are subject to balancing accounts, and if the approved adjustor rates collect more revenue than authorized, the rates are reset, and ratepayers are credited for any over-collection.[360] Thus, we do not find the fact that adjustors continued to collect revenue after the adjustor sweep of the 2016 Rate Case to mean that the totality of APS's rates (base rates and adjustors) are causing APS to exceed its authorized rate of return or that APS's rates are unfair.

Although we find that there has not been sufficient evidence presented in this proceeding to support finding that it is more likely than not that APS is over-earning, the testimony and comments received highlighted several areas of significant concern regarding the rates approved in Decision No. 76295 -- namely that only 50 percent of APS's residential ratepayers are on their most economical rate plan,[361] and the related question of whether the customer outreach and education plan was adequate to educate consumers about their rate options. In addition, the complainants have cast a spotlight on the effect of adjustors on ratepayers' bills. While the adjustors are designed to collect costs that fluctuate, changes to adjustor surcharges are often analyzed outside a rate case, and approved without considering the entirety of the bill impact on consumers. It is almost a certainty that most residential ratepayers are not aware of the role of adjustors, how adjustor surcharges are set, or when they are adjusted. Reviewing the Decisions in which the Commission approved the REAC and DSMAC adjustors, at the same Open Meeting as the 2016 Rate Case Settlement Agreement, we note that those Decisions do not show a requirement for the same customer notice directives as required in a rate case.[362] The costs being collected by the adjustor mechanisms receive Commission and stakeholder scrutiny and are trued-up annually, which provides safeguards for consumers, but they have real impacts on ratepayers that probably are not widely known or understood.

The evidence in this proceeding does not prove that the residential rates approved in Decision No. 76295 are unfair to residential ratepayers. Mr. Woodward has focused on the affordability of the rates and limited opportunities for the smallest users to mitigate the effects of the rate increase approved in Decision No. 76295.[363] Mr. Woodward's assumptions about the composition of the ratepayers on the

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[360] Likewise, of course, if the adjustors under-collect, they may be increased.

[361] Tr. at 645.

[362] *See* Decision No. 76312 (indicating the average residential bill impact and capped amount for the REAC); Decision No. 76313 (determining the approved adjustor rate without providing a bill impact).

[363] We note that Ms. Champion asserts that Mr. Woodward (and approximately 254,000 residential customers on the XS

R-XS rate, their ability to adjust behavior to respond to increased rates, and their ability to pay increased rates may be accurate, but we do not have the data to make such determinations. Without knowing more about the impacts of the New Rates on this group of consumers, or indeed the residential class as a whole, we cannot overturn the findings of Decision No. 76295 and find the rates to be unfair.

Nevertheless, we are concerned that given the significant rate design changes approved in Decision No. 76295, there is the possibility that APS could be exceeding its authorized rate of return. The complainants' testimonies and the substantial public comment in this case have shown that there has been widespread misunderstanding of the Commission's findings in Decision No. 76295, a breakdown of effective communication between the Commission and ratepayers concerning bill impacts, apprehension over the New Rates -- demand charges in particular, and confusion over the role of adjustors. Even if complainants have not met the burden of proof for us to or to reopen Decision No. 76295 pursuant to A.R.S. § 40-252 or require APS to file a new rate case, the evidence presented in this case has not alleviated our concerns about the adequacy of APS's outreach and education efforts and the possibility of over-earning that caused us to order a rate review and audit of APS in Docket No. E-01345A-19-0003. APS's limited four-month review of bill impacts in this proceeding is not sufficient to address our concerns as we need a full 12 months of data to make a fully informed assessment. Thus, based on the record in this proceeding, we believe that a rate review of APS and audit of its customer outreach and education program is in the public interest and is the best way to determine definitively whether APS's rates and charges remain just and reasonable.

There may be many reasons for ratepayers' opting for rate plans that might not be the most economical, such as not wanting or being able to shift load, apprehension about demand charges, as well as ratepayer inertia or being overwhelmed by choices. The Commission needs better data about ratepayer behavior so that in the future, accurate projections can be employed in the rate design process. We direct APS and Staff, either as part of the rate review and audit being conducted in Docket No. E-01345A-19-0003, or as part of APS's continuing outreach and education efforts, to gather additional

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rate, their most economical rate) cannot "realistically mitigate the effect of the rate increase by reducing or shifting his energy consumption" (Champion Reply Brief at 15). This argument ignores the fact that Mr. Woodward did mitigate the effect of the rate increase.

information about ratepayer motivations in selecting rate plans. In addition, we believe that the rate review and audit should analyze whether there is a particular segment of the residential class that might be more heavily or unreasonably impacted by the New Rates.

**C. Recommendations for Future Rate Cases.**

The parties have suggested various ways of approaching future rates cases to avoid some of the confusion and perceived lack of transparency or forthrightness in communicating the impact of the 2016 Rate Case. Ms. Champion and APS agree that using some form of the "bin analysis" to generate a table that shows the distribution of the expected rate impacts would be helpful in assessing and explaining the reasonableness of the expected impacts. APS also suggests that stakeholders brainstorm better ways of communicating impacts. We agree that these types of actions would assist the Commission and public in understanding the bill impacts of various rate proposals and benefit the development of better ways to communicate the effect of a rate increase on consumers who have different load profiles than reflected in the monthly average for the year. A workshop may provide the best forum for brainstorming ideas.

We also find reasonable the suggestion that there be greater transparency and communications with consumers about adjustor rate resets. It was confusing for consumers when the REAC and DSMAC reset concurrently with, but independently of, the adjustor sweep that contributed to the new revenue requirement approved in Decision No. 76295. Staff and stakeholders should consider how to better communicate the full impact of all Commission decisions affecting consumers.

We do not find it reasonable to adopt Ms. Champion's recommendation that customers be allowed to remain on transition rates indefinitely, or that residential customers never be restricted from switching rate plans, because such limitations would restrict the Commission's ability to set rates that are fair to all parties and that achieve various policy goals. We do find as a result of the evidence in this case that it is reasonable to allow APS ratepayers one additional opportunity to switch rate plans. Because this would be a modification to the Settlement Agreement approved in Decision No. 76295, we direct Staff to commence a proceeding pursuant to A.R.S. § 40-252 for the limited purpose of allowing such modification. Although we will limit the scope of this A.R.S. § 40-252 proceeding to this one provision (because we do not want to wait to allow ratepayers to find their most economical

rate), we will not preclude potential future modifications to the Settlement Agreement arising from the findings of the rate review and audit performed in Docket No. E-01345A-19-0003.

Ms. Champion,[364] Mr. Woodward,[365] and Mr. Gayer[366] have suggested that rate cases should not be resolved by settlement. We do not find that settlements are *per se* contrary to the public interest. Settlements, if conducted in a fair, open, and transparent manner, can promote the public interest by lowering rate case expenses and lessening demand on limited public resources. A blanket prohibition on settlements would not be in the public interest. We believe it is in the public interest to continue to evaluate each proposed settlement on its own merits.

Mr. Woodward's suggestions concerning political influence and less burdensome filing requirements are being addressed in other dockets such as the Code of Ethics (Docket No. AU-00000-17-0079), through other investigations (Docket Nos. E-01345A-19-0043 and E-01345A-19-0005) and in the Commission's ongoing efforts to implement more efficient, less burdensome policies and practices.[367]

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

## FINDINGS OF FACT

1. On January 3, 2018, Stacey Champion filed with the Commission a formal Complaint against APS ("Champion Complaint"). The Champion Complaint, signed by Ms. Champion, was submitted in the form of a Change.org petition including Ms. Champion's name and the names of 425 other individuals characterized as customers of APS.

2. On January 5, 2018, Richard Gayer filed a Motion to Intervene, stating that he objected to excessive charges to himself and other APS customers, duplicate charges, and APS's refusal to allow customers to use Bill Estimation or Self-Reporting.

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[364] Champion Opening Brief at 13.
[365] Woodward Opening Brief at 7.
[366] Gayer Opening Brief at 9.
[367] *See* azcc.gov. The Commission is in the process of phasing in eFiling capabilities and has recently implemented Global Consent to Email Service and a process for "Following a Docket," which allows any entity to receive notifications when filings are made in any docket, without intervening.

3. On January 11, 2018, APS filed a Notice of Service of the Formal Complaint filed by Stacey Champion.

4. Also on January 11, 2018, Mr. Gayer filed a Consent to Email Service.

5. On January 12, 2018, APS filed a Consent to Email Service.

6. On January 16, 2018, by Procedural Order, APS's Consent to Email Service was approved.

7. On January 18, 2018, Commissioner Bob Burns filed a copy of a letter sent by him to members of the Arizona State Legislature responding to inquiries about the Commission's process regarding the Champion Complaint.

8. On January 19, 2018, Mr. Gayer filed a First Amended Complaint to include claims of consumer fraud under A.R.S. § 44-1521(5), discrimination against "new" customers related to mandatory TOU rates, and violations of due process.

9. Also on January 19, 2018, Ms. Champion filed a Consent to Email Service, providing a list of email addresses of purported APS customers in addition to her own.

10. On January 24, 2018, by Procedural Order, Ms. Champion's Consent to Email Service was approved, and the additional email addresses provided were added to the service list to receive emailed courtesy copies of Commission filings.

11. Also on January 24, 2018, a Procedural Order was issued approving Mr. Gayer's Consent to Email Service and noting that Mr. Gayer, a signatory to the Change.org petition, was already a party to this proceeding (and thus, intervention was not necessary).

12. On January 29, 2018, Ms. Champion filed a Response to Procedural Order Regarding Consent to Email Service by Stacey Champion on behalf of Herself and Petition Signatories and Request to be Recognized as Representative. Ms. Champion attached a list of current signatories to the Change.org petition as of January 26, 2018, and a list of comments received on the Petition, as well as a list of 115 "verified APS customers." Pursuant to A.A.C. R14-3-104(C), Ms. Champion requested to be designated as the Representative of the APS customers who had thus far signed onto the Complaint. She requested that the Commission accept the 115 APS customers, for whom she provided mailing addresses, as parties to this matter; accept Ms. Champion as the named representative of the Petition

signatories; completely rehear the APS rate case (Docket No. E-01345A-16-0036); and grant any other relief as may be appropriate.

13. On January 30, 2018, APS filed a Motion for a More Definite Statement or Alternatively Answer and Motion to Dismiss. APS argued that the allegations set forth in the Complaint are not sufficient because the Complaint does not identify the Decision or parts of any Commission Order or rule alleged to have been violated or allege that the rates being charged are not just and reasonable and, further, falls short of the pleading standards set forth in A.A.C. R14-3-106(L), which require a complete statement of the grounds for a complaint including the acts or omissions complained of and the nature of the relief sought. APS requested that the Complainants make a more definitive statement regarding the nature of the allegations pursuant to Ariz. R. Civ. P. 12(e) or, in the alternative, that the Complaint be dismissed under Ariz. R. Civ. P. 12(b)(6) for failure to allege a set of facts that give rise to any claim of relief.

14. Also on January 30, 2018, APS filed a Response to Mr. Gayer's Motion to Amend, opposing what APS characterized as Mr. Gayer's attempt to unilaterally amend the Complaint to unduly broaden the dispute, collaterally attack Decision Nos. 76295 and 76374, and add a "futile" claim under the Arizona Consumer Fraud Act.

15. Also on January 30, 2018, APS filed a Request for Procedural Conference and/or Procedural Order to discuss how the matter would proceed, including identifying parties and claims, and APS's pending motion and response.

16. On February 1, 2018, Commissioner Burns docketed an email exchange between Ms. Champion and Commissioner Burns' policy advisor informing Ms. Champion that all communications needed to be public and on the record.

17. On February 2, 2018, Mr. Gayer filed a Response to Champion's Response/Request on Email Service and Class Representative, stating that he supported Ms. Champion's requests, but was concerned about her being designated as class representative, as he wished to represent himself.

18. Also on February 2, 2018, by Procedural Order, a procedural conference was set for February 15, 2018.

19. On February 6, 2018, Mr. Gayer filed a Response to APS's Motion for a More Definite Statement.

20. On February 12, 2018, Mr. Gayer filed "Opposition to APS's Motion to Dismiss the First Amended Complaint."

21. Also on February 12, 2018, Mr. Adam Stafford filed a Notice of Appearance of Counsel on behalf of Ms. Champion.

22. On February 13, 2018, Ms. Champion filed a Response to Arizona Public Service Company's Motion for More Definite Statement or Alternatively Answer and Motion to Dismiss.

23. On February 15, 2018, the procedural conference convened as scheduled. Ms. Champion and APS appeared through counsel, and Mr. Gayer appeared *pro per*. During the procedural conference, several issues were discussed, including that the scope of Mr. Stafford's representation only extends to Ms. Champion; Ms. Champion's request to be appointed as class representative of the complaining APS ratepayers; Mr. Gayer's request that he be allowed to represent his own claim; APS's belief that the petition signers are not parties to the proceeding and its concerns for protecting ratepayer information; and how to treat the claims in Mr. Gayer's "Amended Complaint" that appear to go beyond the scope of the Champion Complaint.[368] At the February 15, 2018, procedural conference, APS proposed that the parties meet off the record to work out issues of parties and process.[369]

24. On February 26, 2018, Mr. Gayer filed a Declaration on Deception by APS Re: Transition Rates.

25. By Procedural Order dated March 5, 2018, it was determined that Ms. Champion's February 13, 2018, filing qualified as complying with APS's request for a more definite statement; that APS would have the opportunity to file an Answer or Motion in response to the revised Champion Complaint; and, further, that the time for APS to file such response would be stayed pending the parties' discussions on procedural questions.[370] The parties were directed to confer, with the goal of finding agreement on a process for moving forward, and to file a joint recommendation or request for procedural conference. It was determined that a ruling on Ms. Champion's request to be appointed

[368] Mr. Gayer alleges violations of the Arizona Consumer Fraud Act and impermissible discrimination.
[369] February 15, 2018, procedural conference transcript ("Tr.") at 9, 23.
[370] Tr. at 15-17, 29.

class representative would be deferred until the parties had filed their procedural recommendations. Further, it was determined that Mr. Gayer's January 19, 2018, filing, captioned First Amended Complaint, raised claims that went beyond the scope of the claims raised in the Champion Complaint, and that the claims raised therein should be considered separately from the Champion Complaint, and stayed pending the outcome of the Champion Complaint. The parties were directed to file their procedural recommendations or a request for procedural conference by March 8, 2018.

26. On March 7, 2018, Mr. Gayer filed a Status Report. Mr. Gayer reported that the parties had met but were unable to agree on a schedule and updated the status of his propounded Data Requests.

27. On March 8, 2018, Ms. Champion filed a Request for Procedural Conference and reported that the parties were unable to agree on a process for moving forward.

28. Also on March 8, 2018, APS filed Procedural and Process Recommendations. APS also reported that the parties were unable to agree on a process. APS proposed a schedule that would have a hearing commence in June 2018.

29. On March 16, 2018, Mr. Gayer filed a Response to APS's Procedural Suggestions. Mr. Gayer stated that he opposed APS's proposed procedural recommendations because they did not provide sufficient time for complainants to adduce the required "sufficient evidence" for the hearing required by AG Opinion 69-6.

30. By Procedural Order dated March 21, 2018, a procedural conference was set for March 28, 2018, for the purpose of discussing a procedural schedule and establishing other procedural requirements.

31. On March 22, 2018, Ms. Champion filed a Response to APS's Procedural Process Recommendations. Ms. Champion recommended extending APS's proposed schedule by 60 to 90 days.

32. The Procedural Conference convened as scheduled on March 28, 2018, with APS and Ms. Champion appearing through counsel and Mr. Gayer appearing *pro se*.

33. On April 6, 2018, APS filed its Answer to the Revised Champion Complaint.

34. On April 13, 2018, Mr. Gayer filed a Response to APS's Answer to Revised Champion Complaint.

35. On April 16, 2018, by Procedural Order, a hearing was set for September 25, 2018, and a procedural schedule was adopted. The April 16, 2018, Procedural Order established a deadline to request intervention of April 27, 2018.

36. On April 20, 2018, Warren Woodward, an APS customer, filed a Motion to Intervene, stating that his concerns were directly related to the rates already at issue in this case.

37. On April 23, 2018, APS filed a Notice of Filing Protective Order regarding the treatment of confidential information in this proceeding.

38. By Procedural Order dated April 27, 2018, Mr. Woodward was granted intervention.

39. On June 8, 2018, Mr. Gayer filed a "Motion to Compel APS to Answer His Data Requests, Set 3 ARCP Rule 37(a) As Required by AAC R-14-3-11(A)" ("Motion to Compel").

40. On June 19, 2018, APS filed a Response to Mr. Gayer's Motion to Compel.

41. On June 21, 2018, Chairman Forese filed a letter in the docket requesting that Staff participate in this proceeding.

42. On June 22, 2018, Mr. Gayer filed a "Reply on Motion to Compel APS to Answer Data Requests, Set 3 ARCP Rule 37(a) As Required by AAC R-14-3-11(A)" and requested oral argument.

43. On June 28, 2018, by Procedural Order, a procedural conference was set for July 11, 2018, for the purpose of hearing oral argument on Mr. Gayer's Motion to Compel.

44. On June 29, 2018, Staff filed a Notice of Filing Regarding Participation in this Case and Request for Procedural Conference and proposed a revised schedule for the proceeding.

45. On July 2, 2018, by Procedural Order, the procedural conference scheduled for July 11, 2018, was expanded to include discussion of Staff's participation in addition to oral argument on the pending discovery dispute.

46. On July 3, 2018, Ms. Champion filed a Motion to Continue Procedural Conference requesting continuance of the July 11, 2018, procedural conference because Ms. Champion was out of the country until after July 14, 2018.

47. On July 6, 2018, Mr. Woodward filed an Objection to Participation by Staff.

48. On July 9, 2018, by Procedural Order, the scope of the July 11, 2018, procedural conference was limited to only include discussion of the Motion to Compel, and the discussion of Staff's participation was set for a procedural conference on July 25, 2018.

49. During the July 11, 2018, procedural conference, Mr. Gayer's Motion to Compel was discussed and denied in part and granted in part. The resolution of the Motion to Compel was documented in a July 19, 2018, Procedural Order.[371]

50. The July 25, 2018, Procedural Conference convened as scheduled, with Ms. Champion, APS, and Staff appearing through counsel and Mr. Gayer and Mr. Woodward appearing *pro se*. Staff was permitted to participate in the proceeding, but Staff's proposed alternative schedule was not adopted. The presiding ALJ determined that the hearing dates would remain as previously scheduled; that Staff would be permitted to file a Staff Report/Testimony on September 17, 2018;[372] and that the parties had the option of filing a response to the Staff Report/Testimony by September 21, 2018, or providing responsive testimony from the witness stand at the hearing.

51. Also on July 25, 2018, Mr. Gayer and Mr. Woodard filed their respective Prepared Direct Testimonies.

52. On July 31, 2018, APS filed a Notice of Filing Direct Testimony.

53. Also on July 31, 2018, Ms. Champion filed a Notice of Filing Direct Testimony and Expert Report of Abhay Padgaonkar on behalf of Complainant Stacey Champion.

54. On August 10, 2018, by Procedural Order, filing dates were set for the parties.

55. On August 13, 2018, Mr. Gayer filed a "Response to the New Scheduling Order with Alternative Motion for Staff to File by Sep 11th."

56. On August 14, 2018, Mr. Gayer filed Rebuttal Testimony to APS's Direct Testimony.

57. On August 16, 2018, Mr. Woodward filed Testimony in Rebuttal to APS's Direct Testimony.

58. On August 17, 2018, APS filed a Notice of Filing Rebuttal Testimony.

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[371] The Motion to Compel was granted with respect to Gayer 3.1 and denied with respect to Gayer 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, and 3.8.

[372] August 17, 2018, was the original date set for filing responsive testimony.

59. Also on August 17, 2018, Ms. Champion filed a Notice of Filing Rebuttal Testimony of Abhay Padgaonkar on Behalf of Complainant Stacey Champion.

60. On August 22, 2018, Ms. Champion filed a Notice of Filing regarding an email exchange between Rick Holman and Commissioner Olson.[373]

61. On August 31, 2018, Ms. Champion filed a Request for Pre-Hearing Conference, to discuss the number of witnesses and time for testimony in order to avoid unnecessary or cumulative evidence at the hearing.

62. On September 6, 2018, by Procedural Order, a pre-hearing conference was set for September 17, 2018.

63. On September 11, 2018, Mr. Stafford filed a "Notice of Filing" responding to concerns that Mr. Stafford has a conflict of interest related to his representation of Ms. Champion and Western Resource Advocates (a signatory to the Settlement Agreement) and indicating that both clients have given inferred consent to his continued representations.

64. On September 13, 2018, Staff filed a Motion for Extension of Time to File Testimony/Staff Report.

65. On September 17, 2018, the pre-hearing conference was convened as scheduled. During the pre-hearing conference, Commissioner Tobin inquired why signatories to the Settlement Agreement were not participating in this proceeding given the provision in the Settlement Agreement which calls for signatories to support the settlement.

66. On September 17, 2018, Mr. Woodward filed a Response in Opposition to Staff's Motion for Extension of Time to File Testimony/Staff Report and a Witness Summary.

67. Also on September 17, 2018, Mr. Gayer filed a Witness Summary and an Opposition to Staff's Motion to Extend Time to File.

68. Also on September 17, 2018, Ms. Champion filed a Response to Staff's Motion for an Extension of Time to File Testimony/Staff Report; Exhibit "A" to the Non-Disclosure Agreement executed by Adam L. Stafford, Stacey Champion, and Abhay Padgaonkar; and a Notice of Filing

[373] Mr. Holman is a customer of APS and sent an email to Commissioner Olson seeking a rehearing of the APS rate increase.

Witness Summary.

69. Also on September 17, 2018, APS filed a Notice of Filing testimony summaries.

70. On September 20, 2018, Mr. Woodward filed an Answer to Commissioner Tobin's Question, which had been posed at the September 17, 2018, pre-hearing conference.

71. Also on September 20, 2018, Mr. Gayer filed an Answer to Commissioner Tobin's Question, which had been posed at the September 17, 2018, pre-hearing conference.

72. On September 21, 2018, Commissioner Tobin docketed a letter addressed to ALJ Rodda requesting an interlocutory order regarding whether Section 40.6 of the Settlement Agreement (requiring parties to the settlement to defend the agreement) has been triggered.

73. Also on September 21, 2018, Ms. Champion filed a Response to Commissioner Tobin's Letter to ALJ Rodda, opining that the Settlement Agreement did not create an affirmative obligation to intervene in this matter which is a consumer complaint.

74. On September 24, 2018, Commissioner Burns filed a letter to the docket in response to Commissioner Tobin's September 21, 2018, letter opining that the Complaint is not questioning the validity of the Settlement Agreement, and thus has not triggered Section 40.6 of the Settlement Agreement.

75. On September 25, 2018, APS filed a Response to Commissioner Letters.

76. On September 26, 2018, Staff filed its Staff Report.

77. On September 25, 26, 27, and 28 and October 1, 2018, a full evidentiary hearing was held at the Commission's Phoenix offices before a duly authorized ALJ of the Commission.

78. On October 3, 2018, Commissioner Dunn filed a letter in the docket requesting additional information from APS about its education and outreach efforts.

79. On October 9, 2018, Mr. Woodward filed his Response to Commissioner Dunn's October 3, 2018, letter.

80. Also on October 9, 2018, Mr. Gayer filed a Notice Re: First Amended Complaint. Mr. Gayer indicated that acceptable relief in this matter would be rescission of Decision No. 76295.

81. On October 19, 2018, Commissioner Tobin docketed an email received from Greg

Eisert[374] concerning Mr. Eisert's thoughts on the proceeding.

82. On October 26, 2018, Ms. Champion, APS, Mr. Woodward, Mr. Gayer, and Staff filed Post-Hearing Briefs.

83. Also on October 26, 2018, APS filed its Notice of Filing Residential Bill Impacts and its Response to Commissioner Dunn's Request.

84. On November 1, 2018, Commission Tobin docketed a letter addressed to APS seeking clarification of APS's October 26, 2018, filing regarding Residential Bill Impacts.

85. On November 2, 2018, APS filed a Response to Commissioner Tobin's November 1, 2018, letter.

86. On November 6, 2018, Mr. Woodward filed a Response to Commission Tobin's November 1, 2018, letter to APS.

87. Also on November 6, 2018, Ms. Champion filed a Request for an Extension of Filing Deadline to file her Reply Brief, to December 14, 2018, because of the volume of data in this matter, the need for additional information from APS to analyze the data, and the unavailability of Ms. Champion's expert during two periods before the November 16, 2018, deadline.

88. On November 7, 2018, Staff filed a Response to Complainants' Request for an Extension of Filing Deadline, stating that Staff did not object to a brief extension, but believed that December 14, 2018, was too long and thus unreasonable.

89. Also on November 7, 2018, APS filed a Response to Stacey Champion's Request for an Extension of Filing Deadline, stating that any extension should be limited to no later than November 30, 2018.

90. By Procedural Order dated November 8, 2018, Stacey Champion's Request for Extension of Filing Deadline until December 14, 2018, was granted, and the deadline for all parties to file Reply Briefs was extended to December 14, 2018.

91. On November 9, 2018, APS filed an update to its response to Commissioner Dunn's request.

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[374] Mr. Eisert did not identify his interest in the proceeding. Mr. Eisert has participated in other Commission dockets as a representative of the Sun City Homeowners Association.

92. On November 13, 2018, Mr. Woodward filed a Motion for Recusal/Disqualification of Commissioner Tobin.

93. On November 14, 2018, Commission Tobin docketed a letter in reply to APS's November 2, 2018, letter, seeking information on the number and demographics of customers who experienced a bill impact of 10 percent or greater, the root cause of the higher-than-forecasted average increases, and suggested solutions to help these customers understand the new rate designs to better control their costs.

94. On November 19, 2018, Mr. Woodward filed a Notice of Erratum Regarding Woodward's Motion for Recusal/Disqualification, correcting a sentence in his Motion.

95. On November 27, 2018, Ms. Champion filed Complainant Stacey Champion's Joinder in Intervenor Warren Woodward's Motion for Recusal/ Disqualification.

96. On December 11, 2018, Mr. Stafford filed a Notice of Disassociation of Counsel, providing notice that he was no longer associated with the firm of Wong & Carter, but would remain counsel of record for Ms. Champion.

97. On December 13, 2018, Mr. Gayer filed his Closing Post-Hearing Brief.

98. On December 14, 2018, APS, Ms. Champion, Mr. Woodward, and Staff filed their Reply Briefs.

99. Also on December 14, 2018, APS filed a Response to Commission Tobin's November 1 and 14, 2018, letters.

100. Also on December 14, 2018, Ms. Champion filed a Notice of Filing Response to APS Residential Bill Impacts May-August 2018.

101. On January 4, 2019, APS filed an Objection to Padgaonkar's Post-Hearing Analysis.

102. On January 10, 2019, Ms. Champion filed a Reply to APS's Objection to Champion's Response to APS's Residential Bill Impacts May-August 2019.[375]

103. The Discussion section of this Order accurately describes the positions of the parties

[375] We treat both APS's post-hearing bill impact analysis and Ms. Champion's Response thereto to be authorized post-hearing filings, but note that both filings make substantive assertions that have not been subject to cross-examination. Thus, while we may consider them in our deliberations similar to how we consider public comment, we do not afford them the weight of sworn and vetted testimony.

and is incorporated as if set forth herein.

104. The burden of proof in this matter rests with Ms. Champion and the Intervenors as the complainants.

105. The appropriate standard of proof in this complaint matter is preponderance of the evidence.

106. To prevail in their complaint brought under A.R.S. § 40-246, Ms. Champion and the Intervenors must prove, by a preponderance of the evidence, that APS is in violation of law or Commission Order or rule or that the rates approved in Decision No. 76295 are not just and reasonable.

107. Decision No. 76295 is a final order of the Commission, which found that the rates and charges resulting from the Settlement Agreement were just and reasonable.

108. Based on the totality of the record in this proceeding, Ms. Champion and the Intervenors have not proven by a preponderance of the evidence that APS has not properly implemented the rates and charges approved in Decision No. 76295.

109. Based on the totality of the record in this proceeding, Ms. Champion and the Intervenors have not proven by a preponderance of evidence that the projected 4.54 percent average residential bill impact under the rates approved in Decision No. 76295 was calculated incorrectly.

110. Based on the totality of the record in this proceeding, Ms. Champion and the Intervenors have not proven by a preponderance of the evidence that APS failed to enact a customer education and outreach program, or to expend $5 million on such program, as required under Decision No. 76295.

111. Based on the totality of the record in this proceeding, Ms. Champion and the Intervenors have not proven by a preponderance of the evidence that APS is over-earning or that the New Rates are unfair.

112. The totality of the record in this proceeding, including but not limited to the substantial modification of the Residential rate design, extensive public comment, and the evidence that a significant number of APS's residential customers have not opted for their most economical plans, has not alleviated our concerns, expressed in Docket Nos. E-01345A-16-0036 and E-01345A-16-0123, that APS's public outreach and education plan may not have been effective in accomplishing its intended goal, and that there is a possibility that APS is exceeding its authorized rate of return.

113. On January 9, 2019, the Commission opened Docket No. E-01345A-19-0003 to conduct a rate review and examination of the books and records of APS and its affiliates, subsidiaries, and Pinnacle West and an audit of APS's customer education and outreach program required under Decision No. 76295.

114. The totality of the record in this proceeding supports the action of conducting a rate review, examinations, and audit in Docket No. E-01345A-19-0003. That docket will also examine APS's earnings to determine if it is exceeding its authorized rate of return. Because the Commission is already engaging in such review, examination, and audit, it is reasonable to require that any further Commission action concerning whether APS is over-earning its authorized rate of return or should be required to engage in additional education and outreach efforts related to the New Rates occur in Docket No. E-01345A-19-0003.

115. It is reasonable to require in APS's next rate case that a "bin analysis" such as that prepared by Ms. Hobbick in Ex JEH-1DR be performed and used to provide more meaningful notice of estimated bill impacts to customers;[376] and that in APS's next rate case that APS, Staff, and other stakeholders collaborate on better ways to communicate the impact of rate changes and adjustor mechanisms to residential customers.

116. It is reasonable and in the public interest to take actions required to re-open Docket Nos. E-01345A-16-0036 and E-01345A-16-0123, pursuant to A.R.S. § 40-252, for the limited purpose of allowing APS's residential ratepayers an additional opportunity to switch rate plans. This directive does not preclude future modifications to the rate plans or outreach and education plan requirements adopted in Decision No. 76295, which will be considered and may be directed as a result of the inquiry in Docket No. E-01345-19-0003.

117. It is not in the public interest to prohibit settlement discussions or settlement agreements in all rate cases.

118. Mr. Woodward's suggestions concerning political influence and less burdensome filing requirements are being addressed by the Commission through other dockets and efforts and need not

[376] Ex APS-4 Hobbick Dir.

be addressed here.

## CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV, §§ 3 and 14 of the Arizona Constitution; A.R.S. §§ 40-203, 40-241, 40-246, 40-247, 40-248, 40-250, 40-251, 40-252, and 40-361; and A.A.C. R14-2-103.

2. The Commission has jurisdiction over APS and the subject matter of the Complaint.

3. Ms. Champion and the Intervenors have not demonstrated by a preponderance of the evidence that APS violated Decision No. 76295, or any rules of the Commission, or that the rates and charges approved in Decision No. 76295 are not just and reasonable.

4. Pursuant to A.R.S. §§ 40-252, 40-253, and 40-254, the findings of Decision No. 76295 are conclusive.

5. Any relief granted upon a showing that the rates and charges authorized in Decision No. 76295 are not just and reasonable can be prospective only, to avoid impermissible retroactive ratemaking.

## ORDER

IT IS THEREFORE ORDERED that the Champion Complaint is dismissed with prejudice, and any further issues concerning the reasonableness of Arizona Public Service Company's rates and charges established in Decision No. 76295, and the adequacy of its customer education and outreach program shall be considered and addressed in Docket No. E-01345A-19-0003.

IT IS FURTHER ORDERED that Staff shall take such action as is necessary to re-open Docket Nos. E-01345A-16-0036 and E-01345A-16-0123, pursuant to A.R.S. § 40-252, for the limited purpose of allowing Arizona Public Service Company's residential ratepayers an additional opportunity to switch rate plans.

IT IS FURTHER ORDERED that Arizona Public Service Company shall, no later than 30 days after the effective date of this Decision, identify those residential ratepayers whose bills have increased by more than 10 percent under the New Rates, based on 2015 Test Year determinants, and those ratepayers who are not on their most economical plan ("most impacted ratepayers").

IT IS FURTHER ORDERED that Arizona Public Service Company shall, within 30 days after

the effective date of this Decision, file in Docket Nos. E-01345A-16-0036 and E-01345A-16-0123 a plan indicating by what means and within what timeframe Arizona Public Service Company will provide the most impacted ratepayers with targeted educational materials that (1) address how the most targeted ratepayers can manage their behavior with the goal of lowering their electric bills, and (2) explain any opportunities for the most impacted ratepayers to switch to their most economical plan.

IT IS FURTHER ORDERED that its next rate case, Arizona Public Service Company shall be required to produce a "bin analysis," such as that prepared by Ms. Hobbick in Ex JEH-1DR to her Direct testimony in this proceeding, and use the bill analysis data to provide more meaningful notice of estimated bill impacts to customers.

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IT IS FURTHER ORDERED that in its next rate case, Arizona Public Service Company, Staff, and other stakeholders shall collaborate on better ways to communicate the bill impact of rate case determinations and of adjustor mechanisms to residential customers.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN BURNS COMMISSIONER DUNN

COMMISSIONER TOBIN COMMISSIONER KENNEDY COMMISSIONER OLSON

IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2019.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
JLR/sa

SERVICE LIST FOR: STACEY CHAMPION, ET AL. VS. ARIZONA PUBLIC SERVICE COMPANY

DOCKET NO.: E-01345A-18-0002

Adam L. Stafford, Esq.
207 N. Gilbert Road, Suite 001
Phoenix, AZ 85234
Attorney for Stacey Champion
astafford@wongandcarter.com
sc@champion-pr.com
KathyMooreRealtor@cox.net
joephxaz@hotmail.com
k.sturgis@cox.net
volcanic@cox.net
rppdiehl@gmail.com
joebrk@gmail.com
oakchart@cox.net
diakun_consulting@yahoo.com
hargis_m@hotmail.com
mlicosati@me.com
d.ziegler@hotmail.com
rllavallee@hotmail.com
16024325526@mymetropcs.com
laureyn0550@aol.com
jacobwozniak@yahoo.com
pkocanjer@yahoo.com
timsmith545@gmail.com
almamalexander@gmail.com
andreajhe@yahoo.com
waegener@cox.net
betsy120867@yahoo.com
tmespo0712@gmail.com
leannevc2000@yahoo.com
mikej.schneider85@gmail.com
sylviarainey@cox.net
markdcoco@hotmail.com
editornado@gmail.com
italianpunker@gmail.com
turvater@gmail.com
nats55@ymail.com
charmadillo@gmail.com
azhistoryman@yahoo.com
jpargas@PhoenixUnion.org
billboatman38@gmail.com
bookdfrag@gmail.com
hsdeogun@gmail.com
greenwold@q.com
yealife@gmail.com
james.hanson1@icloud.com
lil_kim_011@yahoo.com
farlie7706@aol.com
bjwazii@aol.com
rickschartman@yahoo.com
claudia.solano07@gmail.com
mandyhenning32@yahoo.com
heckmansheldon@gmail.com
sbrekke825@gmail.com
rtbellinger5@msn.com
deyoung0415@gmail.com
Ismata89@gmail.com
MattyHui@hotmail.com
santhen@cox.net
bret.wall@gmail.com
pnrichards@cox.net
letshavefunshopping@live.com
bettiegibson@gmail.com
tonysteech@gmail.com
raquelebriggs@gmail.com
nassar4@msn.com
ewkitts@gmail.com
rebeccarobertsaz@gmail.com
bret.wall@gmail.com
cdsmith46@hotmail.com
didevlin13@gmail.com
neidich99@yahoo.com
dhartson2070@gmail.com
christin.m.schmitt@gmail.com
awagen@cox.net
mkhutchings9@gmail.com
jcpenney009@gmail.com
patbas7@aol.com
yyare@q.com
shelly.daniels@nielsen.com
dwjiles@real-time-consulting.com
akelley38@hotmail.com
tracy.1977@hotmail.com
32651.pl@gmail.com
RFKinaz@cox.net
cynthiabuser@cox.net
snirdror@yhaoo.com
Nstephenson@mbakeintl.com
briese@gmail.com
leroyandamy@hotmail.com
karina7c@gmail.com
jamesbldwn@yahoo.com
randi.wunch@gmail.com
**Consented to Service by Email**

Thomas Loquvam
PINNACLE WEST CAPITAL CORPORATION
400 North 5th Street, MS 8695
Phoenix, AZ 85004
Attorney for Arizona Public Service Company
Thomas.Loquvam@pinnaclewest.com
Melissa.Krueger@pinnaclewest.com
Debra.Orr@aps.com
Kerri.Carnes@aps.com
**Consented to Service by Email**

Richard Gayer
526 W. Wilshire Drive
Phoenix, AZ 85003
rgayer@cox.net
**Consented to Service by Email**

Warren Woodward
200 Sierra Road
Sedona, AZ 86336
w6345789@yahoo.com
**Consented to Service by Email**

Robin Mitchell, Interim Director
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007
LegalDiv@azcc.gov
utildivservicebyemail@azcc.gov
**Consented to Service by Email**